

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDLE GRIFFIN,

Plaintiff,

HONORABLE JOHN CORBETT O'MEARA

v.

No. 11-14876

LOUIS CONDON, et al.,

Defendants.

_____ /

JURY TRIAL - VOLUME 2

Wednesday, January 18, 2017

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- - -

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1 Detroit, Michigan
2 Wednesday, January 18, 2017
3 9:07 a.m.

4 - - -

5 **THE CLERK:** The court calls the matter of
6 *Randle Griffin v. Louis Condon, et al.*, Case Number 11-14876.

7 **THE COURT:** Counsel, please put your appearances on
8 the record to start the day.

9 **MR. FINK:** Good morning, Your Honor. Wade Fink on
10 behalf of the plaintiff Mr. Griffin, along with my colleagues
11 Brandon Hubbard, Nolan Moody and Jessica Russell.

12 **THE COURT:** Thank you.

13 **MR. SCHNEIDER:** Good morning, Your Honor.
14 Cliff Schneider on behalf of the defendants.

15 **THE COURT:** Mr. Schneider?

16 **MR. SCHNEIDER:** Yes, Your Honor.

17 **THE COURT:** Maybe you have already said it.

18 **MR. SCHNEIDER:** Yes, Your Honor. Good morning.
19 Cliff Schneider on behalf of the defendants.

20 **THE COURT:** Thank you.

21 I don't think we have anything unless you have it for the
22 Court, but we should be ready to go with the jury. Anything
23 else?

24 **MR. FINK:** Your Honor, can I bring one matter to the
25 Court's attention just as it relates to cross-exam of

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1 Mr. Griffin?

2 **THE COURT:** Yes.

3 **MR. FINK:** This was an issue that we brought in a --
4 this is an issue that we had brought in a motion in limine, and
5 the reason that I would respectfully raise it again this
6 morning is it's the type of matter that if it's brought out
7 it's tough to unring the bell. There's reason to believe,
8 Your Honor, that based upon the depositions and the pleadings
9 in this case that defendants intended to bring up allegations
10 of sexual predation and sexual misconduct by the defendant,
11 Mr. Griffin. Not only are those unsubstantiated, there is
12 nothing in his file, there's no misconduct tickets, but it's
13 also wholly irrelevant to the issues in this case. Nothing
14 about the sexual conduct of Mr. Griffin bears on whether or not
15 these officers wrote false tickets for him cooperating in the
16 ombudsman's investigation. So it would be highly prejudicial
17 and irrelevant to mention something like that that's
18 unsubstantiated, toss it into the jury box for no reason,
19 without any basis, and I just want to make sure before, Your
20 Honor, cross-examination happens I think a ruling now would be
21 the right timing given that that kind of thing once heard by a
22 jury --

23 **THE COURT:** I'm not going to attempt to resolve all
24 of the questions that may be present in connection with that
25 right now, but I want to suggest that at least there is a

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1 shadow of relevance there that -- I mean you can start out
2 with, and you did, with the idea that it has nothing to do with
3 what's at issue here and that may be true, but on the other
4 hand, it may not be true if a relationship with somebody was,
5 depending upon how it happened and who it happened with. I
6 just want you to understand that I'm not absoluting that.
7 Depending upon how it develops, it could get a different
8 result.

9 **MR. FINK:** So a delayed ruling, Your Honor, on this
10 issue?

11 **THE COURT:** I'm sorry?

12 **MR. FINK:** No, that's okay. Is there a ruling on the
13 issue or do you want to wait?

14 **THE COURT:** I want to wait, yes.

15 **MR. FINK:** Thank you, Your Honor.

16 **THE COURT:** And if Mr. Barkholz will go get that
17 black box for me, I'll have that. I always forget it. That's
18 my hearing aids. I do a little better with hearing aids. It's
19 in the briefcase.

20 **MR. FINK:** Thank you, Your Honor.

21 **THE COURT:** Thank you.

22 If you'll be seated for a moment, we'll get the next step.
23 Can you go or --

24 **THE CLERK:** I'm letting Janie know right now.

25 **THE COURT:** Yes.

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1 I appreciate having the time estimates for the witnesses.
2 Of course it's impossible to know exactly, but I'm sure they
3 are as accurate as we can get and we'll rely upon them until
4 we're advised that we should do something else.

5 Did you get her?

6 **THE CLERK:** She's on her way.

7 **THE COURT:** One of the things -- there are two things
8 I try to remember every time I come down here for any kind of a
9 hearing. The first thing is something that involves the men's
10 room, and that could be important, and the other thing is
11 hearing aids, which I remind myself well in advance of coming
12 down here and about half the time I forget them even though I
13 just thought about them. Anyway, I'm sorry that we're taking
14 time up for that.

15 All right. If you'll forgive me for the brief delay, are
16 we ready for the jury?

17 **MR. FINK:** The plaintiff is ready, Your Honor.

18 **THE COURT:** All right. Mr. Griffin, you are still on
19 the witness stand, and you may take the witness stand before we
20 get the jury in here unless there's some reason not.

21 Very well, we can continue with Mr. Griffin's testimony.
22 Are we ready for the jury?

23 **MR. MOODY:** We are, Your Honor.

24 **MR. FINK:** Yes, Your Honor.

25 **THE CLERK:** All rise.

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1 (Jury in at 9:18 a.m.)

2 **THE COURT:** Members of the jury, please be seated. I
3 think we have got all of you.

4 Thank you for being here pretty much entirely promptly
5 this morning. You all by yourselves were ready to go as a jury
6 pretty much after seven or eight minutes after 9:00, and the
7 rest of the delay was basically attributed to me so I'm sorry
8 about that.

9 In any event, we have Mr., Mr. Griffin, who is the
10 plaintiff in this case, is in the witness chair and he is still
11 under oath, and you may continue with him.

12 **MR. FINK:** Thank you, Your Honor.

13 - - -

14 (9:18 a.m.)

15 **DIRECT EXAMINATION CONTINUED**

16 **BY MR. FINK:**

17 **Q.** Good morning, Mr. Griffin.

18 **A.** Good morning.

19 **Q.** When we last spoke, Mr. Griffin, we were speaking in the
20 time frame of January 2011 and February 2011. Can you remind
21 the jury what your situation was at the Gus Harrison
22 Correctional Facility in January of 2011 and February of 2011?

23 **A.** In January 2011 I was housed at the Gus Harrison
24 Correctional Facility and I witnessed RUM Condon assault
25 Prisoner Bryant, and then early January -- February I was

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1 elected to the warden's forum and then shortly after that I
2 obtained a prison job and went about my day.

3 **THE COURT:** Wait a minute, Mr. Griffin, I -- as has
4 been announced before here this morning, I have some hearing
5 aids in, but usually I can hear everything even better than I
6 would hear it if I didn't have them and I wasn't burdened with
7 this kind of disability, if that's what it is, but right now I
8 can't hear you at least distinctly with everything that you're
9 saying. Although I have got real time, which means it comes
10 right up here in print --

11 **THE WITNESS:** Yes, Your Honor.

12 **THE COURT:** -- I would appreciate it if you would
13 stay closer to the mike and speak a little louder so that gives
14 me pretty much what I need to hear you.

15 **THE WITNESS:** Yes, Your Honor.

16 **BY MR. FINK:**

17 **Q.** Mr. Griffin, at some point did you in January 2011 after
18 you witnessed this assault the by RUM Condon, did you take any
19 action with regard to that assault?

20 **A.** Yes. Prisoner Bryant asked me to write a letter to the
21 legislative ombudsman about what I had witnessed.

22 **Q.** And did you eventually speak with the ombudsman?

23 **A.** Yes.

24 **Q.** At the prison?

25 **A.** Yes.

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1 Q. I want to direct your attention now, Mr. Griffin, with all
2 of that context, to the date of March 2nd, 2011. When I direct
3 your attention to that date, do you remember anything
4 significant happening on that day?

5 A. Yes. I had at 12:30 went to the warden's forum. It
6 supposed to have ended at 2:30, but it carried over between
7 2:30, 2:45, and then I went back to the unit after I was able
8 to make it back.

9 Q. What time did your job start on March 2nd, 2011?

10 A. 2:30 p.m.

11 Q. Now, are there any situations where you are entitled as a
12 matter of prison policy to be late for your job?

13 A. Yes. The warden's forum is what is called an excused
14 absence. It's in the prisoner policy.

15 Q. Does it have a name in prison when you have an ability to
16 be late for your job or you are somewhere else or you have
17 two assignments at once?

18 A. Yes, it's called excused absence.

19 Q. Excused absence. Now, you said the warden's forum ended
20 at what time that day?

21 A. Between 2:35 and 2:45.

22 Q. Now, where does the warden's forum meetings take place?

23 A. On the other side of the yard. About 250 yards away on
24 the other side of the yard through two security gates that we
25 have to clear through to get to the chapel where the warden's

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1 forum is held.

2 Q. What is the building called that it's held in?

3 A. The chapel.

4 Q. The chapel?

5 A. Yes.

6 Q. And, in order to get back to your housing unit, what is
7 the process you have to take to get back to the housing unit?

8 A. Well, we have two security gates that we -- once we come
9 out of the chapel, which has a security gate around it, we have
10 to stand there at that gate and wait there until the officer
11 comes out of the school building. In this case it was cold
12 that day so he was in the school building, below zero, and we
13 waited outside about ten minutes for him to come and open the
14 gate.

15 Q. Is there any other gates or impediments to you getting to
16 the housing unit?

17 A. Yes. There was one more security gate that he has to open
18 up. Once we get through that one, we have to walk on the side
19 of the school building to go through the other security gate as
20 well.

21 Q. How long did it take you to get -- to walk back into the
22 housing unit from the warden's forum meeting when it ended at
23 2:30, 2:45?

24 A. About 20 minutes.

25 Q. 20 minutes?

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1 **A.** Yes.

2 **Q.** What did you do once you got back to the housing unit
3 after it took 20 minutes to get back.

4 **A.** Well, I immediately went to my cell, took my coat and
5 gloves and my hat off and put down my warden's forum material
6 and immediately went up there and asked Officer McMurtrie to
7 let me in the closet so I could get my cleaning supplies.

8 **Q.** Which officer was at the desk to get your cleaning
9 supplies?

10 **A.** Officer McMurtrie.

11 **Q.** Officer McMurtrie. And can you identify Officer McMurtrie
12 for the jury?

13 **A.** Yes, he's the officer sitting right on the end with the
14 glasses on.

15 **Q.** So on March 2nd, 2011 it's your testimony that Officer
16 McMurtrie let you into the supply closet?

17 **A.** Yes, sir.

18 **Q.** And what is the significance of letting you into the
19 supply closet? Why do you have to do that?

20 **A.** Because the supply closet is always locked so it's the
21 only way we can get our supplies and then go complete our
22 assignment.

23 **Q.** What do you need the supplies for?

24 **A.** I have to get the mop, dust pan and broom and things like
25 that so I can clean the dayroom and do my assignment.

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1 Q. It's for your porter duty?

2 A. Yes, sir.

3 Q. Approximately what time did Officer McMurtrie let you into
4 the supply closet to start your job on March 2nd, 2011?

5 A. Approximately, it was something after three o'clock,
6 sometime after 3:00.

7 Q. Was Officer Downard also present on March 2nd, 2011?

8 A. Yes, he was right there at the desk.

9 Q. Okay. Did you do your job that day?

10 A. Yes, sir.

11 Q. Did you have any incidents on March 2nd, 2011 regarding
12 your job?

13 A. No, sir.

14 Q. Did anything else appear significant on March 2nd, 2011,
15 that afternoon?

16 A. Yes. Once I finished my assignment, I think it was
17 somewhere around 3:30, Officer McMurtrie made an announcement
18 that if you want your mail to go to your cell and stand at your
19 door. And I was like that's not right because RUM Condon and I
20 and the rest of the warden's forum members agreed that the mail
21 would be passed out during count pursuant to MDOC policy.

22 Q. So Defendant McMurtrie makes an announcement about the
23 mail, and you are talking about Defendant Condon when you say
24 that?

25 A. Yes.

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1 Q. So what did you do when you heard this announcement that
2 mail was to be passed out about 3:30?

3 A. Well, as the block rep, block representative, I went and
4 got with the other block representative, which is the white
5 block representative, and I went into his office and I asked
6 him why the mail was being passed out --

7 Q. Let's back up. So you went and got another inmate?

8 A. Yes.

9 Q. What was his name?

10 A. Larry Anthony.

11 Q. When you say a block rep, what does that mean?

12 A. He's a block representative. He's another representative
13 of the community that takes issues to the warden. He's a
14 member of the warden's forum.

15 Q. So you are both on the warden's forum?

16 A. Yes.

17 Q. And you said you went to an office. Whose office?

18 A. We went to RUM Condon's office.

19 Q. Defendant Condon?

20 A. Yes.

21 Q. Okay. And what was the discussion with Defendant Condon?

22 A. About the mail. We had a prior agreement that the mail
23 would be passed out during count.

24 Q. Now, why was it significant that the mail be passed out,
25 from the prisoner population's perspective, why was it

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1 important that the mail be passed out at count as opposed to
2 earlier?

3 **A.** Well, when the mail is being passed out during count,
4 everybody is in their cell. During yard time it cuts into our
5 yard. And so a guy have to forego 10, 15 minutes of the last
6 period of his yard to stand at his door to get mail whether he
7 get it or not so it didn't make any sense for the mail to be
8 passed out at that time.

9 **Q.** So you thought being in your cell it would make more sense
10 to pass the mail out then?

11 **A.** Yes.

12 **Q.** What did RUM Condon, Defendant Condon say when you brought
13 this to his attention?

14 **A.** He said he didn't remember that agreement.

15 **Q.** Were there any other incidents with Defendant Condon
16 during that conversation?

17 **A.** No.

18 **Q.** What did you do next?

19 **A.** Well, I just told him that I would get with his
20 supervisor, Deputy DeLeeuw, and I will address the matter with
21 him and then we exited his office.

22 **Q.** Did anything else significant happen related to Defendant
23 Condon that afternoon?

24 **A.** Yes. About ten minutes later he summoned me back in the
25 office. One of the officers called me over the PA to report to

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1 RUM Condon's office.

2 And I went in his office, and he told me that he was going
3 to instruct his staff to pass the mail out during count, and as
4 I turned around to walk away, he made a statement that my
5 statement to the ombudsman was going to come back to bite me in
6 the ass. And I looked back at him and I felt like why you
7 threatening me. And I just kept walking because I'm in the
8 office by myself so I said it's time for me to get up out of
9 here.

10 Q. When he said talking to the ombudsman is going to bite you
11 in the ass, what did you take that to mean?

12 A. My prior statement about him assaulting Bryant.

13 Q. You think he was referencing your cooperation with the
14 ombudsman?

15 A. Yes.

16 Q. What time does count typically occur?

17 A. Between 4:00 and 4:20.

18 Q. So on that day, March 2nd, 2011, were you present for
19 count as far as you remember?

20 A. Yes.

21 Q. Did anything significant happen? Did anyone tell you
22 anything during count?

23 A. No.

24 Q. Did --

25 A. Are you talking about did an officer tell me something? I

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1 didn't understand the question.

2 **Q.** Did anything significant happen during count, any
3 conversations or any incidents?

4 **A.** Well, once the officers made their count round, Prisoner
5 Larry Anthony, who is also the laundry man, came to my cell and
6 told me what he had just witnessed.

7 And I asked him, I said, "Are you sure about that?"

8 He was like, "Yes."

9 I said, "Okay." I said, "Can you give me an affidavit?"

10 He said, "Yes --

11 **Q.** What did you learn from your conversation with Terrance
12 Davis? Or, I'm sorry, with Larry David.

13 Let me try that again. What did you learn from your
14 conversation with Larry Anthony?

15 **A.** That RUM Condon, Officers Downard and McMurtrie had agreed
16 and plotted to get rid of me because they was tired of me
17 changing things. So they was going to write me a ticket to get
18 me kicked off the warden's forum.

19 **Q.** What time is count over, count clear approximately?

20 **A.** Approximately quarter to 5:00 or 5:00 o'clock.

21 **Q.** What did you do on March 2nd after count cleared?

22 **A.** I came out of my cell and I went back to the dayroom.

23 **Q.** And the dayroom, just to remind the jury, is what?

24 **A.** It's our recreation room. We have a TV, two recreation
25 rooms.

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1 Q. Did anything significant happen at that time?

2 A. Yes. Another prisoner came to me and he explained the
3 exact same thing, that he had witnessed the same
4 three defendants, Condon, Downard and McMurtrie, stating that,
5 you know, they was going to write me false tickets because they
6 was tired of me changing things. And also I said, "Can I get
7 an affidavit from you on that because another guy just told me
8 the same thing."

9 Q. What was that prisoner's name, the second prisoner?

10 A. Terrance Davis.

11 Q. So, to be clear, Larry Anthony and Terrance Davis both
12 told you of a conversation between these three defendants
13 conspiring to write false tickets against you?

14 A. Yes.

15 Q. I want to direct your attention now, Mr. Griffin, to the
16 very next day, which is March 3rd of 2011. Do you remember
17 anything significant happening in the afternoon of March 3rd,
18 2011?

19 A. Yes.

20 Q. What happened?

21 A. When shift changed at 2:05, I was summoned to the desk by
22 the officers. And I go to the desk and I get a pass and they
23 tell me --

24 I asked, "Well, what is this for?"

25 They said, "You will find out when you get to the control

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1 center."

2 So I got my coat and went to the control center and saw
3 Sergeant Howard. She reviewed an out-of-place ticket on me.

4 **Q.** Now, let's explain to the jury what that means. You said
5 you got a pass? Is that what you said?

6 **A.** Yes.

7 **Q.** What does that mean?

8 **A.** A signed authorization slip that gives me permission to go
9 from the housing unit to the control center for ticket review.

10 **Q.** And you did go to the control center?

11 **A.** Yes.

12 **Q.** And what did you learn once you got to the control center?

13 **A.** That Officer Downard had written me a ticket for being out
14 of place from work.

15 **Q.** Did someone in the control center, you said Sergeant
16 Howard, hand you a ticket?

17 **A.** Yes. First she reads it with you, then she gives you a
18 copy of the ticket.

19 **Q.** Would you recognize the ticket if you saw it again?

20 **A.** Yes.

21 **MR. FINK:** Your Honor, may I approach the witness
22 with Plaintiff's Proposed Exhibit 58?

23 **THE COURT:** You may.

24 **MR. FINK:** Thank you.

25

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1 **BY MR. FINK:**

2 **Q.** Mr. Griffin, do you recognize this document in front of
3 you?

4 **A.** Yes, sir.

5 **Q.** What is it?

6 **A.** This is the misconduct report that I was written by
7 Officer Downard.

8 **Q.** What is the date on this ticket?

9 **A.** 3-2 of 2011.

10 **Q.** And this is the ticket you were talking about that you
11 received on March 3rd, 2011?

12 **A.** Yes.

13 **MR. FINK:** Your Honor, can I move to admit
14 Plaintiff's Proposed Exhibit 58 as evidence?

15 **THE COURT:** You just did. Is there any objection?

16 **MR. SCHNEIDER:** No objection, Your Honor.

17 **THE COURT:** It's received as Plaintiff's 50 --

18 **MR. FINK:** 58, Your Honor.

19 **THE COURT:** 58.

20 **MR. FINK:** Thank you.

21 **BY MR. FINK:**

22 **Q.** Now, Mr. Griffin, I'm still looking at Exhibit 58 here in
23 front of you, and could you correct me if I'm wrong in reading
24 this, Exhibit 58, it says:

25 "Prisoner Griffin had a detail for the "Housing Unit

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1 Recreation Day Room Only" work detail from 1430 to
2 1600. Prisoner did not show up for work, nor check
3 in for his detail. Prisoner had no conflicting
4 details, pass, etc. that would have kept him from
5 checking in and/or working. Prisoner had no staff
6 authorization to not check in and not work. Prisoner
7 was warned that he needed to check in and work
8 previously by frequent contact."

9 Did I read that correctly?

10 **A.** Yes.

11 **Q.** Who is this ticket written by, Exhibit 58?

12 **A.** Officer Downard.

13 **Q.** And that's one of the defendants here, Defendant Downard?

14 **A.** Yes.

15 **Q.** Could you identify him for the jury?

16 **A.** The officer right here, big guy right here.

17 **Q.** In the middle?

18 **A.** Yes.

19 **Q.** Okay. Did you think this ticket was justified when you
20 received it?

21 **A.** No.

22 **Q.** Why not?

23 **A.** Because I was at the warden's forum and they knew where I
24 was at because they had what is called master call-out, and it
25 show any call-outs you have, any conflicts or anything. So

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1 they have access to this so this -- and they have that for the
2 purpose of knowing where prisoners at at all times. So when
3 time, when time for count comes, you will know exactly where
4 the prisoner is at in the facility.

5 Q. And you were permitted to work the day before?

6 A. Yes.

7 Q. In fact, Officer McMurtrie let you into the supply closet
8 along with Officer Downard at the desk, right?

9 A. Right.

10 Q. What time was this ticket written at, Randle, if you look
11 at, Mr. Griffin, Exhibit 58?

12 Date and time under the narrative.

13 A. 9:31 p.m.

14 Q. On March 2nd, 2011?

15 A. Yes.

16 Q. So that is the day before you received it, at 9:31 p.m.
17 Officer Downard presumably wrote this ticket?

18 A. Yes.

19 Q. And you received it on March 3rd?

20 A. Yes.

21 Q. After you received the ticket, Randle, excuse me,
22 Mr. Griffin, what did you do after you received the ticket at
23 the control center?

24 A. Well, I tried to explain to Sergeant Howard that I was at
25 the warden's forum so I had an excused absence.

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1 Q. And after that conversation did you leave or what happened
2 next?

3 A. Yes. She just gave me a copy of the ticket and I went
4 back to the unit.

5 Q. Once you got to the unit, what happened next?

6 A. Well, I went to my cell, took my coat off, put the ticket
7 up, and I proceeded back upstairs to do my assignment and --

8 Q. Your assignment is your job?

9 A. Yes, my job. And Officer McMurtrie stepped in front of me
10 and told me -- asked me where I thought I was going. I said,
11 "To work." He said, "You no longer work for us, you know, you
12 are double O and you are laid in pending double O from
13 classification."

14 Q. Now, what does that mean, you are laid in, double O.
15 Explain to the jury what that means in prison jargon.

16 A. That means that you are fired and that during the time
17 that you are required to work you are not allowed to come out
18 until the resolution of the misconduct that has been written
19 against you. So you are forced to stay in your cell from -- I
20 was forced to stay in my cell from 2:30 until 10:30 at night.
21 The unit closed at 10:45. So that's all day.

22 Q. The very same man who let you into the supply closet the
23 day before to go to work, Defendant McMurtrie, said you no
24 longer had a job and go to your cell, correct?

25 A. Yes.

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1 Q. Were you able to do your job that day?

2 A. No.

3 Q. The rest of the day where were you?

4 A. I was in my cell, laid in.

5 Q. You couldn't go to yard in the afternoon?

6 A. No.

7 Q. Did anything else significant happen on March 3rd, 2011?

8 A. Yes. After four o'clock count Officer Downard came past
9 my cell, stopped at my door, and told me if I didn't like the
10 ticket that was written on me, do something and they will beat
11 my ass and put me in the hole until I healed up. And then he
12 called me a rat real loud, you know, and then walked off.

13 Q. Officer Downard did this, you said?

14 A. Yes.

15 Q. Is that Defendant Downard sitting at this table?

16 A. Yes.

17 Q. Officer Downard is a big gentleman, correct?

18 A. Yes.

19 Q. He was doing this while you were in your cell?

20 A. Yes.

21 Q. Can you describe the situation under which Officer Downard
22 said what he said?

23 A. He said it in a real aggressive, intimidating tone and
24 left me in fear in the cell. I was just waiting to get my ass
25 beat, I guess, you know.

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1 Q. So you are sitting in your cell?

2 A. Yes.

3 Q. And where is Officer Downard?

4 A. At the entrance of my cell door.

5 Q. Are you sitting down?

6 A. Yes, I was sitting down typing.

7 Q. And what was the first statement he made?

8 A. If I didn't like the ticket that was written on me, do
9 something and more false tickets be written on me.

10 Q. What else?

11 A. That he'll beat my ass and put me in the hole until I heal
12 up. And then he called me a rat.

13 Q. What does that mean, "he'll beat your ass and put you in
14 the hole"? What does it mean to be "in the hole"?

15 A. Being "in the hole" is you are just in a cell, confined to
16 a cell in the administrative segregation unit and can't no
17 one see you there. You are just in a cell. Just in a hole,
18 just in a hole in the wall, just a cell. Nothing in there but
19 a window and a toilet.

20 Q. So if you get your ass beat and thrown in the hole, no
21 one is going to see you until you are healed?

22 A. Exactly.

23 Q. He called you a rat?

24 A. Yes.

25 Q. What's the significance of being called a rat in prison?

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1 **A.** You can't be labeled in rat in prison. A rat in prison
2 cannot -- he cannot exist in the general population. If you
3 are considered a rat, then that means that they have what is
4 called a green light. A green light means wherever you go you
5 get stabbed. Everything you get get taken from you. So after
6 somebody stab you, the rest of them go into your cell and take
7 everything you have. So this will happen in every facility you
8 go to. You can't be a rat in the MDOC, period.

9 **Q.** From your personal knowledge, do guards know the
10 significance of the word "rat"?

11 **A.** Yes, yes. They know what it is, and they know exactly
12 what happens to guys.

13 **Q.** Did you spend the rest of the evening on March 3rd in your
14 cell?

15 **A.** Yes.

16 **Q.** Were you able to go to the library like you normally do?

17 **A.** Yes, we allowed to go to the law library. That's it.
18 Couldn't do anything else though.

19 **Q.** Couldn't work?

20 **A.** No.

21 **Q.** Couldn't go outside?

22 **A.** No.

23 **Q.** Couldn't go to the warden's forum?

24 **A.** No.

25 **Q.** I'm going to direct your attention now, Mr. Griffin, to

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1 the very next day.

2 A. Yes.

3 Q. Which is March 4th, 2011. Do you remember anything
4 significant occurring in the afternoon of that day?

5 A. Yes. Again, at 2:05, shift change, I was summoned to the
6 desk. Once again, I was issued a pass by the officers at the
7 desk, told me to go to the control center. Once again, I said,
8 "For what?"

9 They said, "You will find out when you get there."

10 Q. Do you remember who the officers were at the desk?

11 A. I remember McMurtrie was there. I don't know who the
12 other officer was.

13 Q. Okay. What happened once you went to the control center
14 like you did the day before, now on March 4th, the second time?

15 A. Well, when I got there this time, Sergeant Howard, she
16 began reviewing the out-of-place ticket on me. Once she got
17 through reading the ticket on me, I explained to her, I said,
18 it's impossible for me to be out of place.

19 Q. So you received a ticket on March 4th?

20 A. Yes.

21 Q. And, Sergeant Howard, did she say who wrote the ticket?

22 A. Yes.

23 Q. Who?

24 A. She said Officer McMurtrie.

25 Q. And what was the basis of the ticket written on March 4th?

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1 **A.** The same as this, that I was out of place. I didn't have
2 any staff authorization to be anywhere else except at my
3 assignment.

4 **Q.** So Officer McMurtrie wrote a ticket that you were not at
5 work on March 3rd, the day before?

6 **A.** Yes.

7 **Q.** The same man who said you don't have a job on March 3rd
8 and the same man who knew you were at work on March 2nd, right?

9 **A.** Right.

10 **Q.** He wrote you a misconduct ticket?

11 **A.** Right.

12 **Q.** Did you explain to Sergeant Howard that the ticket was
13 unjustified?

14 **A.** Yes. It took some convincing, but I, after I explained to
15 her, I said just yesterday you issued me a misconduct for the
16 same exact thing. And I said Officer McMurtrie is the one that
17 told me I was laid in so how is it possible that I was out of
18 place in my work assignment, I was out of place in my work
19 assignment when I was actually laid in by the officer that's
20 written this ticket that's before you now.

21 So she paused for a minute. She said, "Hold on, I'm going
22 to go call the unit. I'm going to go check."

23 And so when she called the unit, she came back and she
24 told me and she said, "Yeah, they said you was laid in."

25 **Q.** Did Sergeant Howard take any action with regard to that

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1 ticket?

2 A. Yes, she dismissed that one.

3 Q. Did she tell you that she talked to McMurtrie or no?

4 A. Yes, she told me she talked to him.

5 Q. What did you learn from that conversation?

6 A. She said that he said he was going to write other tickets
7 on me. And I tried to explain to her, I said I didn't
8 understand what for.

9 Q. So the ticket ended up being dismissed?

10 A. Yes.

11 Q. What happened after this situation at the control center?
12 What did you do next?

13 A. All right. I went back to the unit and I tried to talk to
14 my counselor, and Officer McMurtrie told me -- he asked what I
15 was doing. I said I was trying to talk to ARUS Owen. He told
16 me that I'm not talking to nobody. "I'm giving you a direct
17 order to go to your cell now." So I proceeded straight to my
18 cell and I stayed there.

19 Q. This was minutes after Defendant McMurtrie had a ticket
20 dismissed?

21 A. Yes.

22 Q. Wouldn't let you talk to your counselor?

23 A. Yes.

24 Q. Did you eventually speak to Owen?

25 A. Yes, I --

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1 Q. Which is your counselor, correct?

2 A. Yes. I wrote a note. I asked him could he call me out
3 and I gave it to a prisoner that was walking past my cell to
4 give it to him. So he called me out about five minutes later,
5 and I came up there and explained to him what's been going on,
6 officers been harassing me, threatening me, writing me false
7 tickets and so forth and so on. And he told me that he
8 couldn't take my verbal complaint --

9 MR. SCHNEIDER: Objection, hearsay, Your Honor.

10 THE COURT: What's your objection?

11 MR. SCHNEIDER: Hearsay, Your Honor. He's testifying
12 as to what somebody told him.

13 THE COURT: I think it is, and I'll grant the motion.
14 I don't think that it's of any particular importance here, and
15 if it becomes that, you may make the objection again and I'll
16 probably react more --

17 MR. FINK: I'm happy to move on, Your Honor.

18 THE COURT: -- more dispositively.

19 Go ahead.

20 MR. FINK: Thank you, Your Honor.

21 BY MR. FINK:

22 Q. As a result of these what you said were unjustified
23 misconduct tickets and the threats you have described, has your
24 life in prison changed, Mr. Griffin?

25 A. Yes, it changed significantly. You know, I lost a job --

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1 the only job I had, which gave me a purpose. I lost -- you
2 know, I was comfortable at the facility. I lost all the
3 activity. I couldn't participate in any of the activities that
4 I was, you know, that I had going on, friends that I made, all
5 of that, I lost everything. I was forced to sit in my cell and
6 literally do nothing for receiving misconducts that I didn't
7 even earn.

8 Q. Were you removed from the warden's forum?

9 A. Oh, yes, yes.

10 Q. Do you remember the date that you were removed from the
11 warden's forum?

12 A. Yes. I was removed on March 9th. I was removed on March
13 9th, and the warden's forum was March 9th in the afternoon at
14 12:30, the rep meeting. As soon as I got back from being found
15 guilty that morning, one of the officers told me to bring my
16 warden forum supplies up and all of my material so that's what
17 I did. They let me know it was over with.

18 Q. Did you lose your job?

19 A. Oh, yes.

20 Q. How much did you make at your job?

21 A. \$43 a month.

22 Q. \$43 a month?

23 A. Yeah.

24 Q. What's the difference between having \$43 a month in prison
25 and not having \$43 a month in prison?

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1 **A.** Oh, it's significant because everything that we have in
2 prison we have to buy. I mean, soap, tooth paste,
3 toothbrushes.

4 **Q.** How much does a toothbrush cost?

5 **A.** A toothbrush costs 20 cent.

6 **Q.** How much does an energy bar cost?

7 **A.** 25 cent.

8 **Q.** How about Ramen Noodles?

9 **A.** 34 cent.

10 **Q.** Toilet paper?

11 **A.** Toilet paper, you get that free. You can get that free.

12 **Q.** A bag of chips?

13 **A.** A bag of chips was like a dollar 32 cent.

14 **Q.** After these tickets and threats being in Housing Unit 2 of
15 the Gus Harrison Correctional Facility, did you have the same
16 access to the library that you had before?

17 **A.** Yes, I had to the law library but not to the general
18 library. See, when you on sanctions like that, you can't go to
19 the general library.

20 **Q.** How about the same access to the dayrooms, activity rooms?

21 **A.** Oh, no, you no longer have access to any of that anymore.

22 **Q.** How about the yard?

23 **A.** No.

24 **Q.** You were just confined to your cell?

25 **A.** Just confined to your cell all day.

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1 Q. During your work detail?

2 A. No. After you get found guilty of misconduct, then you
3 are confined all day because I had received ten days loss of
4 privileges.

5 Q. When you are incarcerated, Mr. Griffin, as you have been
6 for 26 years, what makes it so it's easy for you -- or not
7 easy, strike that. What's your purpose for getting out of bed
8 in the morning?

9 A. My purpose was, my purpose was the warden's forum, my job,
10 reading, going to the library, general and law, coming out,
11 helping the young guys learn how to read and write and help
12 prepare them to get their GEDs, and just, you know, going about
13 my daily activities.

14 Q. Why were those activities that you just described so
15 important to you?

16 A. Because in prison you've got to have some type of purpose.
17 If you don't have a purpose in prison, most guys go crazy and
18 some even try to kill themselves because there is really no
19 life in prison. You are just in a cage.

20 Q. You carved out a small life for yourself?

21 A. Yes.

22 Q. And as a result of these misconduct tickets and threats,
23 the little dignity you had --

24 A. It was gone, it was gone because what can you do? You
25 know, you've got people threatening you. I'm a man, first and

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1 foremost. They took everything. I had nothing to live for.
2 They took everything, man, you know, and they knew what they
3 was doing.

4 And there was no accountability because everything gets
5 swept up under the rug, everything. And, and because of that
6 many times -- a lot of prisoners don't like to report the
7 abuses that occur because they are worried about that. And
8 just for me going through what I have been through, I'm not
9 going to -- I don't think that I ever get involved with an
10 ombudsman like that again either because I lost too much.

11 Q. You said you wouldn't get involved with the ombudsman
12 again, is that what you said?

13 A. Yes.

14 Q. And why is that?

15 A. Because you lose too much. Because all the things that I
16 went through, all the things that I lost, threats and
17 everything else that came with that.

18 Q. You have written to the ombudsman, you know, after this,
19 but was there hesitation?

20 A. Yes, but that was on behalf of my situation. I'm talking
21 about if I see abuses as far as with other guys and all of
22 that. With my situation it's different. But I'm talking about
23 when I have to put myself on the line for other individuals,
24 trying to help speak out about the abuse that happened to other
25 prisoners. I'm reluctant to do that.

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1 Q. From your personal knowledge, have you learned of anyone
2 else who might hesitate to get involved with the ombudsman?

3 A. Yes, the majority of prisoners are scared to get involved
4 with the ombudsman. They are scared of repercussions.

5 Q. From your personal experience being in prison for
6 26 years, is there a danger in prisoners not being able to
7 report things to the ombudsman?

8 A. Yes, you know, there's a significant danger because
9 prisoners get abused a lot. There's a lot of abuse in prison.
10 But the only difference now is then, back then they have these
11 new cameras that's been catching a lot of officers abusing
12 prisoners, you know. Case in point --

13 Q. Well, my question is, is, the ombudsman, do you see it as
14 an important function from your standpoint as a prisoner for
15 26 years?

16 A. Oh, yes. They play a significant role, you know, and if
17 they -- we don't have them, you know, guys are going to really
18 get hurt probably more often.

19 Q. Mr. Griffin, you write a lot of grievances?

20 A. Yes.

21 Q. And a lot of complaints?

22 A. Yes.

23 Q. Why do you do that?

24 A. Because it's the only way you can protect yourself.

25 Because when you, when you complain about something, just say

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1 something as simple as, oh, I need some toilet paper, and the
2 officer, he thinking that he pay for this toilet paper. You
3 know, you ask him for the toilet, he say no. So then you like,
4 okay, you go to the counselor, "He won't give me any toilet
5 paper. Now, I need toilet paper. This is a basic necessity
6 the policy say you must give us."

7 "Well, what he said."

8 Okay, it's what he said. Okay, now I have to write a
9 grievance because I can't go make him give me the toilet paper.
10 I have to file a grievance so it can go up to a higher person.
11 Like it goes to the supervisor, then it go to the counselor,
12 then it go to last in step three.

13 So we try to resolve it. That's the procedure that they
14 have for us to resolve problems in prison.

15 **Q.** So there are circumstances, without getting into details,
16 there are circumstances where in order to get the most basic
17 human needs, such as toilet paper or a tooth brush or medical
18 care, that you have to write a grievance to get it?

19 **A.** Yes.

20 **Q.** Randle, do you accept the strong likelihood, barring
21 something, that you might spend the rest of your life in
22 prison?

23 **A.** Yes.

24 **Q.** That being the case, what keeps you motivated?

25 **A.** Work. It's like I said, everything I just explained to

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1 you. Working, going to the library, reading, studying and
2 helping people. And it was the warden's forum, you know.

3 Q. Now, Mr. Griffin, I want to go back just for a moment to
4 when you said Jessica Zimbelman visited the prison back in
5 January 2011.

6 A. Yes.

7 Q. From your personal knowledge and your observation, do
8 correctional officers know when an ombudsman is in the
9 building?

10 A. Oh, yes, they know when she's building.

11 Q. How do you know that?

12 A. Oh, when the ombudsman come in the building, they go
13 running into supply closets. They going to act like they real
14 professional, they doing the right thing, and they treating
15 guys right. "Hey, how you doing? Do you need anything? Come
16 on up," you know. But for the most part they scatter like
17 roaches with the lights on.

18 Q. Hold on just one second, Mr. Griffin.

19 I want to clarify one thing, Mr. Griffin, and then
20 Mr. Schneider is going to come up here and ask you some
21 questions.

22 On March 2nd, that day when you were late to work because
23 of the warden's forum?

24 A. Yes.

25 Q. You described an excused absence?

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1 **A.** Yes.

2 **Q.** Does that mean as a matter of prison policy from your
3 personal knowledge that you don't have to be at work at 2:30,
4 but rather when you get back?

5 **A.** Yes. Whenever you make it back, that's when you begin
6 your work.

7 **Q.** All right. Mr. Griffin, I will probably have a few more
8 questions for you when Mr. Schneider is done, but at this time
9 I'm going to turn it over to him.

10 **THE COURT:** Mr. Schneider, cross-examination.

11 Before we get to that, there is, as most of us have seen
12 on television, I suppose, people advertising lights that you
13 can throw in the eyes of someone who is otherwise annoying to
14 you, and I have got one of those on me right now. I haven't
15 bothered anybody about it to this point. I don't know what it
16 is except --

17 **MR. FINK:** I apologize, Your Honor.

18 **THE COURT:** There, it's off. Thank you.

19 **MR. FINK:** My apologies, Your Honor.

20 **THE COURT:** I don't have any idea what it is. It's
21 probably just as well that I don't.

22 Mr. Schneider, you may cross-examine.

23 **MR. SCHNEIDER:** Thank you, Your Honor.

24 - - -

25

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(9:57 a.m.)

1

2

CROSS-EXAMINATION

3

BY MR. SCHNEIDER:

4

Q. Good morning, Mr. Griffin.

5

A. Good morning.

6

Q. All right. Do you remember the dates you were housed at the Gus Harrison Correctional Facility?

7

8

A. Yes. I got there in September 2010.

9

Q. And do you remember when you left?

10

A. Sometime in 2011.

11

Q. Was it March 2011?

12

A. March 2011? I'm not sure.

13

Q. Do you remember where you went to after Gus Harrison?

14

A. Yes.

15

Q. Where was that?

16

A. Lakeland Correctional Facility.

17

Q. All right. And we have heard you talk a little bit about your crime. How many felonies do you have?

18

19

MR. FINK: Objection, Your Honor. This was something that we resolved with counsel before trial, that we would discuss what he's currently serving time for, but to the extent he has any other crimes, they are irrelevant to the case.

21

22

23

THE COURT: I think that's right. We were reserving it for a time when it either would or would not be something relevant to what we're doing here. I so far haven't heard what

24

25

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1 would be relevant to what the jury has to decide in terms of
2 what other crimes this man may have been involved in and may
3 have been accused of and may have been convicted of. If you
4 can give me some reason, I will listen to it, but right now I
5 am not sure what it would be.

6 **MR. FINK:** Your Honor, to the extent it is going to
7 be discussed, can we discuss it at a sidebar if we are going to
8 discuss any prior allegations or criminal convictions?

9 **THE COURT:** He can answer the question I just made.

10 **MR. FINK:** Thank you, Your Honor.

11 **MR. SCHNEIDER:** He testified as to his crime,
12 Your Honor. All I'm trying to ask him is if it was more than
13 one crime. I'm trying to make an accurate record.

14 **THE COURT:** That's all you're going to --

15 **MR. SCHNEIDER:** That's it, Your Honor.

16 **THE COURT:** Was it more than one crime? Is that your
17 question?

18 **MR. SCHNEIDER:** That was the question.

19 **MR. FINK:** Your Honor, we stipulated to this before
20 trial, that we would ask about the crime.

21 **THE COURT:** All right. If it's stipulated to, it
22 isn't a problem. I'm asking Mr. Schneider if that's the
23 question: Have you been accused of other crimes more than
24 once?

25 **MR. SCHNEIDER:** All I want to ask him, Your Honor, is

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1 if he's currently serving on more than one conviction.

2 **THE COURT:** That's a little bit different. You can
3 ask him if he's been convicted of more than one crime and leave
4 it at that unless you've got some other reason.

5 **MR. SCHNEIDER:** I'll leave it at that.

6 **BY MR. SCHNEIDER:**

7 **Q.** Have you been convicted of more than one crime?

8 **A.** On this case here?

9 **THE COURT:** As I understand the question,
10 Mr. Griffin --

11 **THE WITNESS:** I don't understand the question.

12 **THE COURT:** In your life in the area of courts and
13 possible convictions, have you been convicted of more than
14 one crime, period?

15 **THE WITNESS:** Yes, two.

16 **THE COURT:** What?

17 **THE WITNESS:** Two. Two, sir.

18 **THE COURT:** All right. Go ahead.

19 **BY MR. SCHNEIDER:**

20 **Q.** Okay. You also discussed your family yesterday. What
21 year were you married?

22 **A.** I think it was 2002.

23 **Q.** What year?

24 **A.** 2002.

25 **Q.** Are you sure about that?

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1 **A.** Man, why you doing that, man? I just know we get caught
2 up like that, man. You know she here.

3 **MR. SCHNEIDER:** Your Honor, may I approach the
4 witness?

5 **THE COURT:** You may.

6 **MR. FINK:** Your Honor, I'm going to object to this
7 proposed -- this is not part of Mr. Schneider's exhibit book,
8 nor do I remember it from the Joint Final Pretrial Order. I
9 haven't seen this exhibit.

10 **THE COURT:** Well, I haven't seen it either. Is it
11 something I should see?

12 **MR. SCHNEIDER:** You may, Your Honor. Your case
13 manager is not here. May I approach the bench?

14 **THE COURT:** Yes.

15 **MR. SCHNEIDER:** May I respond to the objection?

16 **THE COURT:** Yeah. It's not clear to me exactly what
17 relevance this has to what we're doing here or what the jury
18 has got to have in mind when it deliberates. I don't think
19 they should have what I have been handed as something that says
20 it's a marriage license. What relevance does that have?

21 **MR. SCHNEIDER:** It's not an exhibit, Your Honor. I'm
22 using it to refresh recollection to see if he can remember what
23 year he was actually married.

24 **THE COURT:** Remember what? What the date is?

25 **MR. SCHNEIDER:** The year. He testified a minute ago

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1 as to the year. I'm seeing if this helps him remember what
2 year he was married.

3 **MR. FINK:** Your Honor, that's fine. He can look at
4 the marriage license to refresh recollection.

5 **THE COURT:** You haven't yet accurately remembered the
6 year according to the person. Are you remembering it now?

7 **THE DEFENDANT:** Yes, I see it now.

8 **THE COURT:** And that's the year, that's your
9 testimony?

10 **THE DEFENDANT:** No, it was 2003.

11 **THE COURT:** All right.

12 **BY MR. SCHNEIDER:**

13 **Q.** Okay. You also testified that you have kids. How many?

14 **A.** Four.

15 **Q.** Okay. You had those all before you came to prison?

16 **A.** Yes.

17 **Q.** All right. How many different mothers?

18 **MR. FINK:** Objection, Your Honor. That is absolutely
19 irrelevant to the case, to ask a question like that, as if, as
20 if that has any bearing on the issues in this case. I would
21 ask that Mr. Schneider direct his cross to my direct
22 examination on the issues.

23 **THE COURT:** I -- unless there's something about it
24 that I don't yet understand, that happens once in a while, I
25 don't see how we make that relevant.

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1 **MR. SCHNEIDER:** Okay, Your Honor. I'm just following
2 up on his testimony from yesterday where he was trying to paint
3 himself in a certain light.

4 **THE COURT:** All right. That is not a question you
5 need to get an answer from this witness on.

6 **MR. FINK:** Thank you, Your Honor.

7 **BY MR. SCHNEIDER:**

8 **Q.** Okay. How do you get money in prison, Mr. Griffin?

9 **A.** By work and occasionally gifts from family.

10 **Q.** And then you can go spend that in the prisoner store?

11 **A.** Yes.

12 **Q.** It's called the commissary?

13 **A.** Yes.

14 **Q.** And how do family get money to you in prison?

15 **A.** Through JPay.

16 **Q.** JPay is the name of a system set up for that?

17 **A.** Yes.

18 **Q.** In 2010, 2011, the time frame here, were you getting more
19 money through working or through family, through JPay?

20 **A.** Working.

21 **Q.** You also testified yesterday that you teach other
22 prisoners to read and write. Have you heard of something
23 called a Reading Writing Assistant in prison?

24 **A.** No.

25 **Q.** How many jobs have you had in prison?

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1 **A.** Many.

2 **Q.** Before you came to Gus Harrison did you work?

3 **A.** Yes.

4 **Q.** Now, when a prisoner transfers from one prison to another,
5 they always lose their job, right?

6 **A.** Yes.

7 **Q.** That's just part of being transferred, you are not there
8 anymore?

9 **A.** Right.

10 **Q.** And are you required to either work or go to school in
11 prison?

12 **A.** Yes, you are required to go to work or school. But if
13 work or school is available for you. Most of the time work,
14 they don't have enough jobs for people at the facility.

15 **Q.** Now, in March of 2011 you had this job, or I'm sorry,
16 strike that, you had a job as a porter in March 2011, right?

17 **A.** Yes.

18 **Q.** Do you recall when you got that job?

19 **A.** No, I don't recall the exact date.

20 **Q.** You had that job for about four or five days though; is
21 that accurate?

22 **A.** Yes.

23 **Q.** And your job was to clean one of the dayrooms in the
24 housing unit?

25 **A.** Yes.

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1 Q. There were three dayrooms, correct?

2 A. Yes.

3 Q. You cleaned one of them?

4 A. Yes, sir.

5 Q. And you passed out games?

6 A. Yes, sir.

7 Q. In prison jobs are divided into skilled, semiskilled and
8 unskilled, correct?

9 A. Yes.

10 Q. And there's different pay schedules for each?

11 A. Yes.

12 Q. And this job, this was an unskilled position, correct?

13 A. No. Each job -- you get paid for your skill set. I have
14 a custodial maintenance certificate so I get paid a little
15 extra money.

16 Q. Do you have the plaintiff's exhibit book in front of you?

17 A. Yes.

18 MR. FINK: No, that's yours.

19 MR. SCHNEIDER: Your Honor, may I approach the
20 witness?

21 THE COURT: You may.

22 BY MR. SCHNEIDER:

23 Q. Okay. I have just handed you what's been marked as
24 Plaintiff's Exhibit 14. Do you recognize that document,
25 Mr. Griffin?

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1 **A.** No, I never got -- no, I never received this document.

2 **Q.** Okay. You have never received this?

3 **A.** No.

4 **Q.** Okay. You can put that aside, and I'll move on.

5 When you went to Lakeland Correctional Facility after you
6 left Gus Harrison, did you get a job there?

7 **A.** Yes, months later.

8 **Q.** Okay. In May of 2011, correct?

9 **A.** I'm not sure of the exact date.

10 **Q.** What was that job?

11 **A.** Porter.

12 **Q.** And when you got the porter job there, were you classified
13 as skilled, semiskilled or unskilled?

14 **A.** It's semiskilled. That's as high as you can go on the
15 porter scale.

16 **Q.** All right. And you don't recall the date that you got
17 that next job?

18 **A.** No, sir.

19 **Q.** Do you have any reason to doubt that it was in May of
20 2011?

21 **A.** I wouldn't know one way or the other.

22 **Q.** Okay.

23 **MR. SCHNEIDER:** Your Honor, may I approach the
24 witness?

25 **THE COURT:** You may approach the witness, yes.

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1 **MR. FINK:** Your Honor, I'm going to object to this
2 exhibit again because this is not in the exhibits that have
3 been given to us before trial, nor am I aware of it from the
4 Joint Final Pretrial Order. I have never seen this document
5 from Mr. Schneider.

6 **THE COURT:** What's your response to that,
7 Mr. Schneider?

8 **MR. SCHNEIDER:** It's been produced. It has a Bates
9 number on the bottom of 001360. It's not an exhibit in this
10 case. Again, it's just to refresh recollection to see if we
11 can get Mr. Griffin to remember when he got his next job.

12 **THE COURT:** You can refresh his recollection with it
13 without offering it.

14 **MR. SCHNEIDER:** That's my intention, Your Honor.

15 **MR. FINK:** Thank you, Your Honor.

16 **THE COURT:** Yes.

17 **BY MR. SCHNEIDER:**

18 **Q.** Okay. Mr. Griffin, after looking at this document do you
19 now remember when you got your next job at Lakeland?

20 **A.** It says May 17th, 2011. I got a good work report.

21 **Q.** And that's about two months after you lost your job at Gus
22 Harrison?

23 **A.** Yes.

24 **Q.** I'm going to jump over to Prisoner Bryant. Did you know
25 him well?

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1 A. No.

2 Q. Do you know how old he was?

3 A. Not exactly. I knew he had to be about -- I'm just
4 guesstimating. He couldn't have been older than like 23 and --
5 between 21 and 24. He was a young kid.

6 Q. And I'm not asking you what he was in for, but I just want
7 to know, did you know what he was in for?

8 A. No.

9 Q. Did you know if he got a lot of tickets?

10 A. Yes.

11 Q. Okay. And you testified yesterday or earlier today that
12 you said that Condon grabbed Mr. Bryant. You saw that happen,
13 correct?

14 A. Yes, sir.

15 Q. And all Bryant did was come onto base?

16 A. Yes, with his duffel bag.

17 Q. Okay. And how long was Bryant there before Condon grabbed
18 him?

19 A. A few minutes.

20 Q. All right. And your testimony is that Condon roughed him
21 up?

22 A. Yes. He grabbed him in a violent, aggressive manner.

23 Q. And you said Condon was snatching him around?

24 A. Yes.

25 Q. And shaking him?

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1 **A.** Yes.

2 **Q.** And grabbed his shirt or coat and had it balled up in his
3 hand?

4 **A.** Yes.

5 **Q.** But at your deposition you told me he grabbed him on the
6 arm, snatched his duffel bag, and that's it, correct?

7 **A.** Yes, because that's all you asked me. You asked me --
8 that's what you asked me. You didn't ask me to give you the
9 details how he grabbed him, you know.

10 **Q.** You didn't tell me anything about shaking him around, did
11 you?

12 **A.** No, sir.

13 **Q.** Or coming out like a bull?

14 **A.** No, sir.

15 **Q.** Or grabbing the shirt and coat and having it balled up in
16 his hand?

17 **A.** No, sir.

18 **Q.** And then your attorney asked you about the incident a
19 second time to come back and give more detail; do you remember
20 that?

21 **A.** Yes.

22 **Q.** And, again, you didn't mention any of those things, did
23 you?

24 **A.** No, sir.

25 **Q.** And you don't know if there were any other witnesses to

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1 this incident?

2 A. No, sir.

3 Q. You didn't tell a single person in the prison about it?

4 A. No, sir.

5 Q. When Bryant came out on base, you didn't hear any
6 conversations between Bryant and anybody else?

7 A. No.

8 Q. And you waited a month to contact the ombudsman?

9 A. Yes.

10 Q. You met with somebody from the ombudsman's office. You
11 said it was a Ms. Zimbelman?

12 A. Yes.

13 Q. Where did you say that meeting took place?

14 A. In the ARUS office closest to the entrance of the unit.

15 Q. Which ARUS's office was it? Do you know whose office it
16 was?

17 A. I didn't know that ARUS.

18 Q. How many ARUSs were there in the unit?

19 A. There were two.

20 Q. What time was the meeting?

21 A. In the morning.

22 Q. What does morning mean, just before noon?

23 A. Yes, before noon.

24 Q. And nobody asked you who you were meeting with or why?

25 A. Nobody asked me who I was meeting with, no.

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1 Q. This warden's forum I want to talk a little bit about.

2 Does every unit in the prison have representatives on the
3 forum?

4 A. Yes.

5 Q. Within the unit does each wing have representatives or is
6 it just for the unit?

7 A. Just for the unit.

8 Q. And there's a white rep?

9 A. Yes.

10 Q. And there's a non-white rep?

11 A. Yes.

12 Q. I believe earlier you testified it was a black rep,
13 correct?

14 A. Right.

15 Q. But it's actually called non-white?

16 A. No. On the ballot it says black and white rep.

17 Q. Is that department wide, not just Gus Harrison, that's
18 every prison you've been to?

19 A. No. Most prisons have like non-white and white.

20 Q. How many units were in the prison; do you recall?

21 A. Five.

22 Q. So how many members on the warden's forum?

23 A. You have ten all together.

24 Q. And you get there by being elected by the other prisoners
25 in the housing unit?

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1 A. Yes, majority vote.

2 Q. Anybody who wants to run, as long as they are not barred
3 for some reason they can put their name on the ballot and run
4 for that?

5 A. Yes.

6 Q. On March 2nd when you said you were in Condon's office
7 talking about this mail issue, that mail issue, that was
8 something to do with the warden's forum, correct?

9 A. Yes.

10 Q. Okay. What time was that meeting?

11 A. That meeting was about 3:30.

12 Q. And this was on March 2nd?

13 A. Yes.

14 Q. And then after the meeting you were called back ten
15 minutes later?

16 A. Yes.

17 Q. Who called you back?

18 A. It was an announcement that came over the loudspeaker and
19 told me to report to the RUM's office.

20 Q. And this was the meeting where you say he changed his mind
21 on the mail issue?

22 A. Right.

23 Q. And then just out of the blue made a comment about the
24 ombudsman?

25 A. Yes.

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1 Q. Also on March 2nd do you know what time you got back from
2 the warden's forum meeting that you had?

3 A. I don't know the exact time that I got back.

4 Q. Let me ask you about this. The warden's forum, the
5 members meet with the warden once a month, correct?

6 A. Yes.

7 Q. And then in between those monthly meetings there are
8 meetings where it's just the block reps meeting to talk about
9 what issues to give to the warden?

10 A. Yes.

11 Q. And this meeting, which kind of meeting was this on
12 March 2nd?

13 A. This was a rep, just with the block reps meeting.

14 Q. You and the other block reps to talk about what issues to
15 present to the warden the next time?

16 A. Yes.

17 Q. And after you got back, you said you went to work?

18 A. Yes.

19 Q. You didn't tell anybody you were late though, right?

20 A. No.

21 Q. And you don't know how many other prisoners were in the
22 dayroom when you went in there?

23 A. No. I didn't know the amount of prisoners that were in
24 the dayroom.

25 Q. Was it more than two?

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1 **A.** I can't recall. I just knew it was prisoners -- I
2 remember prisoners being in there.

3 **Q.** And then you got that ticket at some point for allegedly
4 not showing up to work, correct?

5 **A.** Yes.

6 **Q.** Okay. You had a -- well, let me ask you this first.
7 What's the process with the ticket? You get a review by
8 somebody in the prison first, right?

9 **A.** Right.

10 **Q.** And then do you get a hearings investigator?

11 **A.** No. This is a Class 2 misconduct. These are heard by
12 either an ARUS or a sergeant or something like that.

13 **Q.** So there's a more serious type of ticket called a Class 1
14 and this is the Class 2 ticket?

15 **A.** Yes.

16 **Q.** Okay. So you do get a review on the ticket first, right?

17 **A.** Yes.

18 **Q.** And then you get a hearing by someone in the prison?

19 **A.** Right.

20 **Q.** Okay. Did you meet with Sergeant Howard for the review on
21 that ticket?

22 **A.** Yes.

23 **Q.** And that was on March 3rd?

24 **A.** Yes.

25 **Q.** Okay. And you didn't tell Sergeant Howard that you had

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1 actually worked the prior day, did you?

2 **A.** No, sir. I can't recall if I told her, but I don't think
3 I did though.

4 **Q.** Who, who gave you the hearing on that ticket?

5 **A.** What's his name? I fail to recall his name. It start
6 with a D. He was an ARUS.

7 **Q.** Would you flip to Exhibit E in the book in front of you.
8 E. Let me know when you're there.

9 **A.** Yes.

10 **Q.** Okay.

11 **A.** I'm there.

12 **Q.** That first page of Exhibit E, that's the ticket, right?

13 **A.** Yes, that's the ticket.

14 **Q.** All right. If you flip the page, is that the hearing
15 report?

16 **A.** Yes.

17 **THE COURT:** Is this in evidence?

18 **MR. SCHNEIDER:** Well, I'll move to admit it,
19 Your Honor. The ticket is in evidence as Plaintiff's
20 Exhibit 58, I believe it was, but not the hearing report. That
21 wasn't part of that exhibit, so --

22 **THE COURT:** Any objection?

23 **MR. FINK:** I haven't heard any foundation laid or
24 anything about the hearing report.

25 **THE COURT:** The question I have is any objection?

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1 **MR. FINK:** Pending a foundation laid that Mr. Griffin
2 knows what the hearing report is, then no objection.

3 **MR. SCHNEIDER:** I'll lay the foundation, Your Honor.
4 That's fine.

5 **THE COURT:** Go ahead.

6 **BY MR. SCHNEIDER:**

7 **Q.** Okay. The second page of Exhibit E, have you seen that
8 before?

9 **A.** Yes.

10 **Q.** What is it?

11 **A.** That's the hearing report.

12 **Q.** From the ticket on March 2nd?

13 **A.** Yes.

14 **MR. SCHNEIDER:** All right. Your Honor, I would move
15 to admit Defendant's Exhibit E.

16 **THE COURT:** Any objection?

17 **MR. FINK:** No objection, Your Honor.

18 **THE COURT:** It's received as Defendant's --

19 **MR. SCHNEIDER:** E, as in extra.

20 **THE COURT:** E?

21 **MR. SCHNEIDER:** E.

22 **THE COURT:** E.

23 **MR. SCHNEIDER:** Thank you, Your Honor.

24 **BY MR. SCHNEIDER:**

25 **Q.** All right. Mr. Griffin, who conducted the hearing on that

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1 ticket?

2 A. Evers.

3 Q. What was Evers' position in the prison?

4 A. He was an ARUS, assistant counselor. He was a counselor.

5 Q. All right. And he found you guilty of the ticket,
6 correct?

7 A. Yes.

8 Q. And what were the sanctions that he issued you?

9 A. Ten days loss of privileges.

10 Q. Loss of privileges, that was what you were testifying to
11 before about not being able to go out of your cell for a lot of
12 things, correct?

13 A. No -- yes, partly, partly.

14 Q. Okay. And that sanction from this ticket was ten days?

15 A. Yes, sir.

16 Q. And does the ticket list the dates that you were supposed
17 to serve those ten days?

18 A. Yes.

19 Q. All right. It was March 17th to March 27th?

20 A. Yes.

21 Q. Do you know if you were still in the prison on March 27th?

22 A. I don't know.

23 Q. You don't know when you left?

24 A. No.

25 Q. On March 3rd -- this is the date you claim that Officer

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1 Downard made threats to you, correct?

2 A. Yes.

3 Q. All right. What time did that happen at?

4 A. After the four o'clock count cleared.

5 Q. Were you still in your cell?

6 A. Yes.

7 Q. Describe the doors. Are they bars or are they actual
8 doors?

9 A. Actual door.

10 Q. Is there a window or something the officer can speak
11 through to you?

12 A. Yes.

13 Q. Was your door open or closed?

14 A. Mine was wide open.

15 Q. Is that up to you to leave it open or closed?

16 A. Yes.

17 Q. Did I hear you testify yesterday you actually had keys to
18 your own cells?

19 A. Yes.

20 Q. All right. And you don't know of any witnesses to that
21 conversation?

22 A. No.

23 Q. Your cell was next to others though, correct?

24 A. Yes.

25 Q. You also testified earlier today that in segregation you

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1 are just left in a hole all alone, correct?

2 **A.** Yes.

3 **Q.** Okay. You have actually been in segregation before,
4 correct?

5 **A.** Yes.

6 **Q.** All right. Officers do rounds in segregation?

7 **A.** Yes.

8 **Q.** Health care staff does rounds in segregation?

9 **A.** Yes.

10 **Q.** When you had this conversation on March 3rd with Downard,
11 it's your testimony that was after you tried to go to work for
12 the day?

13 **A.** Yes.

14 **Q.** And when you tried to go to work you already knew about
15 the March 2nd ticket?

16 **A.** Yes, I had just got back from receiving the
17 March 2nd ticket.

18 **Q.** All right. And now you were laid in?

19 **A.** No, I didn't know I was laid in until Officer McMurtrie
20 told me that I was laid in.

21 **MR. SCHNEIDER:** Your Honor, may I approach the
22 witness?

23 **THE COURT:** You may.

24 **BY MR. SCHNEIDER:**

25 **Q.** All right. Mr. Griffin, I hand you a copy of your

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1 deposition transcript. Would you turn to Page 42 please?

2 **A.** Yes, I'm there.

3 **Q.** All right. I'm looking at Lines 15 to 23.

4 **A.** Yes.

5 **THE COURT:** Is this in evidence?

6 **THE WITNESS:** Yes.

7 **MR. SCHNEIDER:** Impeachment, Your Honor. Deposition
8 transcript.

9 **THE COURT:** That's what you are offering it for?

10 **MR. SCHNEIDER:** Yes. Not as an exhibit.

11 **BY MR. SCHNEIDER:**

12 **Q.** All right. Mr. Griffin, I'm going to read that. Tell me
13 if I read it correctly.

14 "Q. Did you ask him why you were laid in?

15 "A. No.

16 "Q. Did you know why you were laid in?

17 "A. Yes.

18 "Q. How did you know?

19 "A. I received a ticket."

20 That was your deposition testimony, correct?

21 **A.** Yes.

22 **Q.** So you told me at your deposition that you did know that
23 you were laid in?

24 **A.** Yes.

25 **Q.** And then you tried to go to work anyway?

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1 **A.** That's not exactly it, but yes.

2 **Q.** On that second ticket, the March 3rd ticket, you were
3 reviewed by Sergeant Howard the next day, March 4th?

4 **A.** Yes.

5 **Q.** And you said Sergeant Howard called McMurtrie during that
6 meeting?

7 **A.** Yes.

8 **Q.** You couldn't hear the conversation though?

9 **A.** No.

10 **Q.** The ticket was dismissed at that point though?

11 **A.** Yes.

12 **Q.** You didn't have a hearing on it?

13 **A.** No.

14 **Q.** No sanctions from it?

15 **A.** No.

16 **Q.** When you had that hearing on the first ticket, the Downard
17 ticket in front of ARUS Evers I think you said, correct?

18 **A.** Yes.

19 **Q.** Did you present the defense of, hey, I was at the warden's
20 forum?

21 **A.** Yes, I did.

22 **Q.** But the hearing officer rejected that defense?

23 **A.** Yes.

24 **Q.** All right. Now, the warden's forum, you were on it about
25 a month at Gus Harrison; is that right?

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1 **A.** Yes. I came in, I came in in the middle of a session
2 because it had already been going on about three months before
3 I came in.

4 **Q.** All right. And then March 9th I believe you testified was
5 when you were removed, correct?

6 **A.** Yes, sir.

7 **Q.** And Deputy Warden Chapman told you you were removed?

8 **A.** No. Deputy Warden Chapman, yeah, he told me that I
9 couldn't serve no more because of a memo that the warden at the
10 other facility had put out because I wrote a letter -- myself
11 and other forum members wrote a letter to the regional
12 administrator and asked them to monitor the situation I was in
13 and then she didn't like it so she removed us.

14 **Q.** All right. So at a prior prison the warden removed you
15 from the forum. As a result of that you weren't allowed to
16 serve again for a year?

17 **A.** Yes, that's what they said.

18 **Q.** Okay. And you would have been allowed to serve again --
19 do you remember the date that you would have been allowed
20 again?

21 **A.** I think Deputy Warden Chapman told me I was supposed to
22 been off until 8-18 -- 8-8, 2011. I didn't know nothing about
23 it. Didn't nobody tell me.

24 **Q.** Did Deputy Warden Chapman give you a memorandum about
25 this?

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1 **A.** Yes. On the 10th, yes, he did.

2 **Q.** Would you turn to Exhibit A in the book in front of you,
3 please. Just let me know when you've found it.

4 **A.** I've got it.

5 **Q.** Is that the memo you received from Deputy Chapman?

6 **A.** Yes, it is.

7 **MR. SCHNEIDER:** Your Honor, I would move to admit
8 Defendant's Exhibit A into evidence.

9 **MR. FINK:** No objection, Your Honor.

10 **THE COURT:** It's received as Defendant's A.

11 **BY MR. SCHNEIDER:**

12 **Q.** And who was Chapman in the prison?

13 **A.** He was the acting deputy warden.

14 **Q.** Just so the jury understands the hierarchy within a
15 prison, it goes warden and then directly under that is deputy
16 warden?

17 **A.** Yes.

18 **Q.** Was there also something called an assistant deputy warden
19 at the time?

20 **A.** Yes.

21 **Q.** And that would be right under the deputy?

22 **A.** Right.

23 **Q.** All right. Would you flip to Exhibit F, please.

24 **A.** Yes, I'm there.

25 **Q.** All right. That prior warden who removed you from the

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1 forum at a different facility, did she give you a memorandum or
2 something saying you were being removed?

3 **A.** Yes, she did.

4 **Q.** Exhibit F, is that the memo that you received?

5 **A.** Yes.

6 **MR. SCHNEIDER:** All right. Your Honor, I would move
7 to admit Defendant's Exhibit F into evidence.

8 **MR. FINK:** No objection, Your Honor.

9 **THE COURT:** It's received as Defendant's F.

10 **BY MR. SCHNEIDER:**

11 **Q.** Okay. Would you flip to Exhibit D, please.

12 **A.** Yes, I'm there.

13 **Q.** All right. Have you seen this document before?

14 **A.** Yes.

15 **Q.** All right. That's a memo from Inspector Goldberg,
16 correct?

17 **A.** Yes.

18 **Q.** All right. And this document also lists the reason why
19 the inspector was asking to have you removed from the forum,
20 correct?

21 **A.** Yes.

22 **MR. SCHNEIDER:** All right. Your Honor, I would move
23 to admit Defendant's Exhibit D into evidence.

24 **MR. FINK:** Objection, Your Honor, and if the Court
25 will allow me, I would ask that this issue be discussed at side

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1 bar. It involves issues that we discussed before the trial.

2 **THE COURT:** I think before the trial I informed the
3 parties that I am not fond of sidebar.

4 **MR. FINK:** I totally understand, Your Honor.

5 **THE COURT:** If we need to have a sidebar on this,
6 let's have it when we are done with this session. You can give
7 a reason why we shouldn't do it that way, but that way we'll be
8 able to look at what's going on and make a determination if
9 that appears to be appropriate whether this is admissible or
10 not.

11 **MR. FINK:** This document, Your Honor, on our first
12 day before we selected the jury was part of the stipulations of
13 conduct that would not be discussed. Both counsel and I agreed
14 to it so the contents of it I would like to address.

15 **THE COURT:** I understand. I have heard that. We
16 should go on to something else and save that before going to
17 sidebar.

18 **MR. FINK:** Thank you, Your Honor.

19 **BY MR. SCHNEIDER:**

20 **Q.** All right. Will you flip back to Exhibit C, please.

21 **A.** Yes, I'm there.

22 **Q.** All right. And have you seen that document before?

23 **A.** Yes. I received both of them.

24 **Q.** And this is a document from the warden, correct?

25 **A.** Yes. I received this at the other facility.

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1 Q. All right. And this document from the warden, that's the
2 warden's recommendation to ban you from the warden's forum,
3 correct?

4 A. Yes.

5 MR. SCHNEIDER: All right. Your Honor, I move to
6 admit Exhibit C into evidence.

7 MR. FINK: I have the same objection about this
8 document, Your Honor, that I do about the last one.

9 THE COURT: All right. Unless it's important to
10 something that we're going through right now in the courtroom,
11 I would just as soon have a sidebar on this outside the
12 presence of the jury later on. Is this something that we need
13 to --

14 MR. SCHNEIDER: What I can do, Your Honor, is we can
15 discuss whether or not they are admissible later and if they
16 are I can go over these documents to the jury in closing. I
17 would be fine with that rather than asking the witness
18 questions.

19 THE COURT: Okay. Thank you.

20 MR. FINK: Thank you, Your Honor.

21 BY MR. SCHNEIDER:

22 Q. So when you were on the warden's forum you attended one of
23 the warden's forum meetings, one of the actual meetings with
24 the warden?

25 A. Yes.

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1 **MR. SCHNEIDER:** Your Honor, I'm just asking for a
2 copy of the plaintiff's exhibit book on the witness stand, if I
3 could just have a moment, please.

4 **MR. FINK:** Your Honor, may I approach with this?

5 **THE COURT:** You may.

6 **BY MR. SCHNEIDER:**

7 **Q.** All right, Mr. Griffin. That's the plaintiff's exhibit
8 book. Would you flip to Exhibit 6, please.

9 All right. Exhibit 6, do you recognize that document?

10 **A.** Yes.

11 **Q.** That's the grievance you filed about this, the allegations
12 in this suit, correct?

13 **A.** Yes.

14 **Q.** All right. And if you flip through Exhibit 7 -- I'm
15 sorry, just the first page of Exhibit 7, is that the response
16 you got at step one?

17 **A.** Yes.

18 **Q.** Now, in prison when you file a grievance you write
19 whatever you want, they issue a response, the prison does,
20 correct?

21 **A.** Yes.

22 **Q.** If you're not happy with it, you can appeal to step two?

23 **A.** Yes.

24 **Q.** And if you're not happy with that response, you can go to
25 step three?

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1 **A.** Yes.

2 **Q.** And you did that with this grievance, you went through the
3 three steps?

4 **A.** Yes.

5 **Q.** All right. Exhibit 6 is your grievance, right?

6 **A.** Yes.

7 **Q.** Exhibit 7 is a step one response?

8 **A.** Yes.

9 **Q.** Exhibit 8 is the step two response?

10 **A.** Yes.

11 **Q.** And Exhibit 9 is the step three response?

12 **A.** Yes.

13 **MR. SCHNEIDER:** Your Honor, I would move to admit
14 Plaintiff's Exhibits 6 through 9.

15 **THE COURT:** Any objection?

16 **MR. FINK:** No objection, Your Honor.

17 **THE COURT:** It's received as Plaintiff's Exhibits 6
18 through 9.

19 **BY MR. SCHNEIDER:**

20 **Q.** All right. You testified earlier you filed a lot of
21 grievances in prison, correct?

22 **A.** Yes.

23 **Q.** All right. Normally when you file a grievance do you get
24 some kind of response as to the substance of the claim?

25 **A.** No, typically each response is primarily the same.

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1 Q. This particular response here was a rejection, correct?

2 A. Yes.

3 Q. They said you somehow violated the policy and had to redo
4 the grievance?

5 A. No. Yes, they said I had multiple issues. That's what
6 they said.

7 Q. All right. Did you try to refile that grievance?

8 A. No.

9 Q. So with this grievance that you filed, nobody responded to
10 the merits in the prison, correct?

11 A. No.

12 Q. Did anybody respond to the merits?

13 A. No, they just do like they always do.

14 Q. When you had the loss of privileges for ten days from the
15 ticket?

16 A. Yeah.

17 Q. The Downard ticket. You testified you were still allowed
18 to go to the law library?

19 A. Yes.

20 Q. How about meals, did you get fed in your cell or were you
21 allowed to go down to the chow hall?

22 A. I was allowed to walk to the chow hall.

23 Q. Anything else aside from meals and the law library?

24 A. Yes. I couldn't go to the warden's forum no more. That
25 was over with. I couldn't work anymore. I couldn't

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1 participate in any of my leisure-time activities so I was
2 forced to stay in my cell from the time he laid me in until the
3 time I was found guilty.

4 **Q.** So what I'm asking is, aside from going to law library and
5 meals, was there anything else that you were allowed to leave
6 your cell to go do?

7 **A.** No.

8 **Q.** How about the restroom. Did you have a bathroom in your
9 cell or was that separate?

10 **A.** That was down the hall. You had to ask permission to go
11 to the bathroom.

12 **Q.** Showers?

13 **A.** You had to shower in the morning. Again, you had to ask
14 for permission with your LOP for permission to take a shower.

15 **Q.** Again, just to be clear, since this lawsuit or these
16 incidents, you have written to the ombudsman on behalf of
17 yourself for other issues, correct?

18 **A.** Yes.

19 **Q.** You have continued to file grievances, correct?

20 **A.** Yes.

21 **Q.** And lawsuits, correct?

22 **A.** Yes.

23 **MR. SCHNEIDER:** All right. I have no further
24 questions. Thank you.

25 **THE COURT:** Does plaintiff have anything?

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3 THE COURT: Go ahead.

5 || One moment, Your Honor. I just want to pull a document.

7 (10:37 a.m.)

9 BY MR. FINK:

13 || **A.** Yes.

15 || **A.** Yes.

17 || **A.** Yes.

19 || **A.** Yes.

23 THE COURT: You may.

25 **THE COURT:** Is Mr. Schneider going to object?

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1 **MR. SCHNEIDER:** No, Your Honor. It's fine.

2 **THE COURT:** All right. It's going to be received as
3 61.

4 **MR. FINK:** Thank you. So this is in evidence as
5 Exhibit 61 now.

6 **BY MR. FINK:**

7 **Q.** Randle, do you recognize this document?

8 **A.** Yes.

9 **Q.** Is this the letter that you wrote to the regional prison
10 administrator?

11 **A.** Yes, it is.

12 **Q.** And this is the reason that you threatened the good order
13 of the facility according to the prison?

14 **A.** Yes.

15 **Q.** Could you read the letter to the jury, please.

16 **A.** Yes.

17 "Dear RPA:

18 "A newly elected warden forum is taking office
19 and many fear retaliation for redressing legitimate
20 complaints, e.g. retaliatory transfer, etc.

21 "We have a very committed Forum and intend on
22 diligently challenging issues of concern to the
23 population, staying within the boundaries of
24 PD-04-01-150. Our job to represent the prisoner
25 population regardless if Administrative Staff might

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1 want certain issues addressed.

2 "Collectively, we are asking that the situation
3 be monitored closely. It is not up to MDOC Staff to
4 conclude what they think is best for the prison
5 population, e.g., the current cable contract,
6 improper ventilation in the housing units, food
7 quality, etc. We desire change and plan on achieving
8 such through diligent and professional redress.

9 "No LRF Representative should be retaliated
10 against."

11 That's the only thing the letter said.

12 Q. Threatening the good order of the facility?

13 A. Yes, because I wrote this letter.

14 Q. Did you say professionally and diligently address
15 grievances, is that what you said?

16 A. Yes, sir.

17 Q. And the warden of that prior facility said that that
18 letter was threatening the good order of the facility?

19 A. Yes, yes.

20 Q. And that was at least the pretextual reason for your
21 removal from the warden's forum at Gus Harrison, correct?

22 A. Yes, that's what they used.

23 Q. Did anyone say that to you before you ran for the warden's
24 forum before telling the ombudsman that Defendant Condon
25 assaulted a prisoner?

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1 **A.** No.

2 **Q.** No one ever said anything about your prior threat to the
3 good order of the facility?

4 **A.** No they didn't.

5 **Q.** Based on that letter?

6 **A.** No. No, they didn't.

7 **Q.** In that letter you cite policy directives that you were
8 pursuing, right?

9 **A.** Yes.

10 **Q.** Is that the function of the warden's forum, to bring
11 issues that are of concern to the prisoner population in a
12 professional manner?

13 **A.** Yes. The policy, that same policy requires us to solicit
14 information and issues from the prison population to present to
15 the warden.

16 **Q.** Do you remember who that warden was who removed you at the
17 prior facility?

18 **A.** It was Mary Berghuis, but Deputy Warden Southerby was the
19 one that actually did it. He just put her name down.

20 **Q.** That letter was the reason that you were threatening the
21 good order of the facility?

22 **A.** Yes. That's the only thing I did was write this letter.

23 **Q.** Mr. Griffin, Mr. Schneider asked you if you knew you were
24 laid in, and you had said at your deposition that you knew you
25 were laid in or knew why you were laid in. What's the

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1 reason -- or when did you come to learn that you were laid in?

2 **A.** I came to learn I was laid in when I came up to do my
3 assignment, and Officer McMurtrie stopped me and asked what I
4 thought I was doing. I said I was going to go to work. He
5 said, "No, you no longer work for us. Report back to your
6 cell. You are laid in pending --

7 **Q.** So once Officer McMurtrie told you, you knew the reason
8 you were laid in?

9 **A.** Yes.

10 **Q.** Is that what you meant by "I knew why I was laid in"?

11 **A.** Yes.

12 **Q.** Does the warden's forum representative have more
13 responsibilities than just attending the monthly meeting?

14 **A.** Yes. Yes, it does.

15 **Q.** What else do you do throughout the month other than just
16 the meetings?

17 **A.** Well, we have to -- we have different committees. We have
18 the food service committee. We have recreation, PBF. There is
19 a lot of money involved in the PBF because we have what is
20 called a Prisoner Benefit Fund where the prisoners generate our
21 own money. So when we get things in prison, the public is not
22 paying for it. It's just money that we earn and we raise from
23 fundraisers and things like that. So we have to figure out
24 ways that would best help the prison to spend this money. And
25 when you are dealing with things such as large sums of money, I

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1 mean like hundreds of thousands of dollars and you try to
2 address certain issues, they don't like that.

3 Q. So the warden's forum, in sum, has more responsibilities
4 on a day-to-day basis than just going to the meetings?

5 A. Oh, yes, yes, yes.

6 Q. Randle, are you familiar with prison policy?

7 THE COURT: Mr. Griffin. That's at least the second
8 time you have done it.

9 MR. FINK: I apologize, Your Honor.

10 BY MR. FINK:

11 Q. Mr. Griffin, I apologize.

12 A. Yes.

13 Q. Are you familiar with the policy directives and prison
14 guidelines?

15 A. Yes, very.

16 Q. Mr. Schneider asked you about refileing your grievance on
17 the issues in this case. Do you remember that?

18 A. Yes.

19 Q. Why couldn't you refile your grievance?

20 A. Because MDOC policy states that -- 03021130 clearly states
21 that you cannot refile the same grievance, it would be
22 duplicate, it says. Now, if they reject the grievance, you
23 still have the right to appeal it to step two and to step
24 three.

25 Q. So your choices, if I understand you correctly, are either

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1 appeal it or drop it?

2 **A.** Exactly.

3 **Q.** And if they decide that you are wrong, it's too bad?

4 **A.** Yes.

5 **MR. FINK:** That's all I have, Your Honor.

6 **THE COURT:** Any recross as far as you are concerned,
7 Mr. Schneider?

8 **MR. SCHNEIDER:** Yes, Your Honor, just a couple of
9 questions.

10 - - -

11 (10:44 a.m.)

12 **RECROSS-EXAMINATION**

13 **BY MR. SCHNEIDER:**

14 **Q.** Mr. Griffin, it's true that organized protests are not
15 allowed in prison, correct?

16 **A.** Yes, it's not.

17 **Q.** And your duties on the warden's forum involved raising
18 issues to the warden, correct?

19 **A.** Yes, but we have to present them to the administrative
20 assistant as well.

21 **MR. SCHNEIDER:** Okay. Thank you.

22 **THE WITNESS:** Okay.

23 **MR. FINK:** Your Honor, may I ask one question and
24 that's it on redirect?

25 **THE COURT:** I just want to invite the jury to reflect

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1 upon the fact, and I have been doing this quite a while myself,
2 what Mr. Fink is doing, and I certainly am as guilty as anyone,
3 but lawyers are terrible liars. They get up and say they want
4 to ask one question and they always, they always -- well, not
5 always --

6 **MR. FINK:** I would stipulate to one question, Your
7 Honor.

8 **THE COURT:** All right.

9 **MR. FINK:** Thank you.

10 - - -

11 (10:45 a.m.)

12 **REDIRECT EXAMINATION**

13 **BY MR. FINK:**

14 **Q.** Mr. Griffin, at any point were you trying to organize a
15 protest at the facility that you were removed from the warden's
16 forum?

17 **A.** No, sir.

18 **MR. FINK:** Thank you.

19 **THE COURT:** Anything from you, Mr. Schneider?

20 **MR. SCHNEIDER:** No, Your Honor. No questions.

21 **THE COURT:** Very well. We're going to take a break.

22 We're leaving Mr. Griffin as a witness in the witness box. We
23 may excuse you when we get the jury back, but right now you are
24 still under oath.

25 Please go to the jury room.

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1 (Jury out at 10:46 a.m.)

2 **THE COURT:** Can we have a sidebar?

3 **MR. FINK:** Sure.

4 **THE COURT:** Mr. Griffin, you can return to counsel
5 table if you prefer.

6 **MR. MOODY:** Your Honor, with the Court's permission,
7 may I excuse myself?

8 **THE COURT:** Yes.

9 **MR. MOODY:** Thank you.

10 (At side bar on the record out of the hearing of the jury,
11 as follows:)

12 **MR. FINK:** I'm a liar.

13 **THE COURT:** Not seriously.

14 **MR. FINK:** I know. I'm kidding.

15 **MR. SCHNEIDER:** All right. So, Your Honor, a big
16 thing that's at issue in this case is why the plaintiff was
17 removed from the warden's forum. We have evidence of that,
18 that the inspector was investigating him for numerous
19 instances. One of the exhibits I have offered is the actual
20 memo from the inspector. Not to prove the proof of the matter.
21 We don't know, we don't care whether or not Mr. Griffin was
22 actually involved in these things, but that is the reason that
23 they used to remove him from the forum, and the warden issued
24 this permanent ban on him as a result of that.

25 **MR. FINK:** Your Honor, two issues. The first issue

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1 is this. When we first came to trial and made a stipulation,
2 we agreed that so long as we didn't introduce evidence of any
3 physical injury, nothing related to the March 15th alleged
4 assault would come into evidence. Both of these documents
5 reference an assault that Mr. Schneider agreed that he would
6 not submit evidence on.

7 But even further, Your Honor, Mr. Griffin, as now the
8 document in evidence indicates, was removed from the forum on
9 March 10th. These documents are subsequent to that assault so
10 they have no relevance because he had already been removed from
11 the forum before March 15th when this alleged assault occurred.
12 Therefore, it becomes unfairly prejudicial to mention some
13 alleged incident he had with another inmate, and it's also
14 something Mr. Schneider agreed to before.

15 **THE COURT:** I'm not going to stick Mr. Schneider with
16 something he already agreed to.

17 **MR. FINK:** Okay.

18 **THE COURT:** But I agree with the plaintiff on this.
19 I don't think it's relevant, and it's prejudicial or at least
20 potentially so, which doesn't mean we can't come back to it,
21 but I'm not going to allow it right now. I don't see its
22 connection.

23 **MR. FINK:** Thank you, Your Honor.

24 **THE COURT:** Okay. Thank you.

25 **MR. FINK:** Are we in recess for a moment?

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1 **THE COURT:** Yes, we are.

2 **MR. FINK:** Thank you, sir.

3 (End of discussion at side bar.)

4 **THE COURT:** Court is in recess.

5 **THE CLERK:** All rise.

6 (Recess from 10:49 a.m. to 11:10 a.m.)

7 **THE CLERK:** All rise. The Court is reconvened in the
8 case of *Randle Griffin v. Louis Condon, et al.*, Case Number
9 11-14876.

10 **THE COURT:** Are we ready to proceed or is there
11 something else?

12 **MR. HUBBARD:** Plaintiff is ready, Your Honor.

13 **MR. SCHNEIDER:** Ready, Your Honor.

14 **THE COURT:** Bring in the jury.

15 There's somebody new at plaintiff's table. I suppose we
16 don't have to get into it now.

17 **MR. HUBBARD:** Lynne Hess from the Dickinson Wright
18 law firm. She's a paralegal and has accompanied me on many
19 trials before.

20 **THE COURT:** Welcome.

21 **MS. HESS:** Thank you.

22 **THE CLERK:** All rise for the jury.

23 (Jury in at 11:11 a.m.)

24 **THE COURT:** Members of the jury, please be seated.
25 Thank you for your patience, and thank you for being

11-14876; Griffin v. Condon, et al.

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1 cooperative. We are getting a lot done so far today with the
2 witness who is the plaintiff in this case, who has now been
3 excused from the stand and gone back to counsel table, and
4 plaintiff will call their next witness.

5 **MR. HUBBARD:** Yes indeed, Your Honor.

6 Your Honor, plaintiff now calls Ms. Jessica Zimbelman to
7 the stand.

8 **THE COURT:** Come right here and take the oath,
9 please.

10 - - -

11 **JESSICA ZIMBELMAN,**

12 being first duly sworn to tell the truth,
13 was examined and testified upon her oath
14 as follows:

15 **THE COURT:** Ms. Zimbelman, welcome. Please be
16 seated.

17 You may examine.

18 **MR. HUBBARD:** Thank you, Your Honor.

19 - - -

20 (11:12 a.m.)

21 **DIRECT EXAMINATION**

22 **BY MR. HUBBARD:**

23 **Q.** Ms. Zimbelman, first, thank you very much for being here
24 today. I understand that you are a lawyer and you are of
25 course juggling a busy schedule so thank you.

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1 You are indeed a current lawyer, but where are you
2 employed?

3 **A.** I work for the State Appellate Defender Office.

4 **Q.** And is that abbreviated SADO, S-A-D-O?

5 **A.** Yes.

6 **Q.** Thank you. What exactly do you do while working with
7 SADO?

8 **A.** I represent indigent criminal defendants on the appeal of
9 their convictions whether by trial or guilty plea.

10 **Q.** And when you say indigent, what do you mean?

11 **A.** An individual who cannot afford an attorney, to hire an
12 attorney for their appeal.

13 **Q.** And you say you argue for their appeal. Is it safe to say
14 that you have appeared before the Michigan Court of Appeals?

15 **A.** Yes.

16 **Q.** In fact, you have actually appeared before the
17 United States Supreme Court, correct?

18 **A.** Correct.

19 **Q.** On your we'll call it "down time" you also happen to be an
20 adjunct professor for Michigan State University College of Law,
21 correct?

22 **A.** Correct.

23 **Q.** And what do you teach there?

24 **A.** I teach two classes. I teach a moot court class
25 essentially instructing second-year law students about

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1 appellate law, and I teach a first-year writing and advocacy
2 course. That's what I'm currently teaching this semester.

3 Q. How long have you been employed with SADO?

4 A. Since August of 2012.

5 Q. And did you have an occupation before that?

6 A. Yes.

7 Q. And can you please tell me what that was?

8 A. I was a senior analyst with the Legislative Ombudsman's
9 Office.

10 Q. When you say the ombudsman's office, what do you mean?

11 A. I worked as a staff member for that office. I guess I
12 don't really understand what you're looking for.

13 Q. Sure. Is it fair to say that you have an appreciation and
14 understanding as to what the ombudsman's office actually is and
15 the duties that it performs, correct?

16 A. Yes.

17 Q. Okay. Can you tell us what your understanding is as to
18 what the ombudsman's office actually does?

19 A. The ombudsman's office was created by state statute, and
20 the task, I suppose, was to investigate and monitor the
21 Michigan Department of Corrections on behalf of the state
22 legislature. That wasn't particular to representing prisoner
23 complaints exclusively. There were staff issues. We certainly
24 had the authority to investigate those as well. Primarily what
25 we ended up doing on a day-to-day basis was fielding letters

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1 and complaints from prisoners about things that were occurring
2 in the Michigan Department of Corrections.

3 Q. So it's fair to say then that you would actually
4 investigate prisoner complaints, correct?

5 A. Correct.

6 Q. And while you worked with the ombudsman's office, that was
7 part of your job duties?

8 A. Correct.

9 Q. And during such investigations would you investigate the
10 security and the safety of prisoners?

11 A. Yes.

12 Q. And what about their living conditions. That as well?

13 A. Yes.

14 Q. Medical treatment?

15 A. Yes.

16 Q. And it's an office created by statute, you said, correct?

17 A. Yes.

18 Q. What do you mean when you say that?

19 A. The legislature passed a bill, which the governor signed
20 into law, to create and fund our office. So it is an office
21 that the state legislature and governor presumably wanted to
22 exist.

23 Q. And while you were employed there, is it fair to say that
24 you were carrying out the purpose of that statute?

25 A. To the best of my ability, yes.

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1 Q. And while -- well, strike that.

2 While you were employed there, did you actually undergo
3 investigations of prison facilities?

4 A. Yes.

5 Q. And you did that under the authority of the statute,
6 correct?

7 A. Correct.

8 Q. So it was an authorized investigation by law, correct?

9 A. Yes.

10 Q. Did you take your job seriously?

11 A. Yes.

12 Q. Were you proud of the work that you did?

13 A. Yes.

14 Q. Ms. Zimbelman, being here today is actually a bit
15 difficult for you, isn't it?

16 A. Yes.

17 Q. Could you explain to us why?

18 A. When I worked for the ombudsman's office, I had a very
19 different role or my job was very different than it is now. So
20 some discussions about my work or investigations that I did
21 five, six, seven years ago I would, I would hate to see any
22 damage come to relationships that I have built in my new role
23 as an assistant defender with SADO because of work that I did
24 when I was operating under a different job.

25 Q. So from your perspective being here today talking about

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1 the investigations that you underwent causes you concern
2 regarding your current professional role at SADO, correct?

3 **A.** Correct, in addition to concern about the mission of the
4 ombudsman's office being -- I don't want to say harmed, but
5 there being some effect to that mission by certain things being
6 made public.

7 **Q.** Notwithstanding those concerns, do you stand by the work
8 that you did while employed by the ombudsman's office?

9 **A.** I do.

10 **Q.** Do you know how many prison facilities there actually are
11 in the State of Michigan?

12 **A.** I think we're down to about 35. I know that when I
13 started with the ombudsman's office there were more prisons,
14 but several have closed.

15 **Q.** Located in both the lower peninsula and the upper?

16 **A.** Yes.

17 **Q.** In your role as an investigator for the ombudsman's office
18 did you have occasion to visit all 35 of those prisons?

19 **A.** I did.

20 **Q.** And when you actually undertook an investigation, was it a
21 regular practice of yours to record with whom you spoke, where
22 you visited and the activities which you undertook?

23 **A.** Yes. My practice when I was doing that would be to take
24 handwritten notes while visiting and talking with the
25 individual prisoners that I was interviewing. You can't take

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1 computers into a correctional facility so I used handwritten
2 notes on a legal pad, and then I would subsequently when I was
3 back in the office transcribe those notes into our database
4 that we had to track the complaints that we received.

5 Q. And when you're undergoing that process, because of the
6 inability to actually physically carry a computer into the
7 prison facility, you of course strived to accurately record
8 what were originally handwritten notes into the database,
9 correct?

10 A. Yes.

11 Q. And that database serves a purpose, correct?

12 A. Yes.

13 Q. And is that so that you can recall upon the visit and the
14 investigations that you have historically had to refresh your
15 memory as to what actually occurred?

16 A. Yes.

17 Q. Before you would actually go and visit a prison facility,
18 so, for example, if you know you are going to be visiting a
19 prison facility in the following week, would you prearrange for
20 your visit?

21 A. Yes.

22 Q. How so?

23 A. Our -- I was going to say yes, to the best of my
24 recollection. I don't believe, while the statute allowed us to
25 show up at a correctional facility, I don't actually remember

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1 doing that unannounced, but I may have. But the normal process
2 for me when I was going into a facility would be to email the
3 administrative assistant, which is an individual that works
4 usually in the warden's office. And I would usually be
5 accompanied by a colleague of mine. We initially were called
6 investigators. We changed our title to analyst. So
7 two investigators or analysts would go. I would usually email
8 the administrative assistant and give them a list of prisoners
9 we wanted to speak to.

10 **Q.** Why would you do that?

11 **A.** To make it as easy as possible on correctional staff.
12 Usually we would be talking to about 12 -- 10 to 15 prisoners
13 in a day. That's a logistical burden on the MDOC staff and
14 facility staff so we were trying to be as accommodating as
15 possible.

16 **Q.** So, by and large, it was your regular practice to arrive
17 announced rather than unannounced, correct?

18 **A.** Correct.

19 **Q.** And the prison facility staff was aware of that because
20 you would communicate with them regarding your upcoming visit?

21 **A.** I cannot say who knew what besides the single individual
22 that we would email to set up these appointments. I don't know
23 what that individual then told other staff.

24 **Q.** In your experience and observation -- well, strike that.
25 How many years did you undergo investigations for the

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1 ombudsman's office?

2 **A.** I worked there from February 2009 until July of 2012.

3 Approximately 3 1/2 years.

4 **Q.** From your experience in doing the investigations at the 35
5 prison facilities throughout the State of Michigan and coming
6 in announced, was it your understanding and perception that
7 word that you were coming spread pretty quickly?

8 **A.** I would say yes, that is my impression. It was a little
9 bit different facility to facility. Sometimes we would be --
10 the prisoners themselves would be called out and we would meet
11 with them in the visiting room so we weren't actually in the
12 housing units, but other prisons the staff would accompany us
13 to the housing units to meet with these individuals in an
14 office within the housing unit. So in those cases where they
15 were called up to the front to the visiting room I can't say
16 for sure what the housing unit staff might have known. I have
17 to assume that if we were in the housing units the housing unit
18 staff knew who were in their units.

19 **Q.** In my mind I picture working at a restaurant and the
20 health department is coming in and those who are working in the
21 kitchen appreciate that indeed the health department will be
22 coming soon. Is that a safe analogy?

23 **A.** I think that's a safe analogy.

24 **Q.** You mentioned the housing unit, and I want to follow up on
25 that. You would have one way in which you would undergo an

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1 investigation would be to visit the housing unit actually in a
2 room within the housing unit, correct?

3 **A.** Correct.

4 **Q.** Did you also ever arrange to have a tour of the housing
5 unit?

6 **A.** I believe, from my recollection, I took a tour of each
7 correctional facility in the state over the course of those
8 three and-a-half years. Usually the MDOC staff who was guiding
9 the tour would take us through a housing unit, usually not
10 every housing unit in a facility. But I have been in many and
11 toured many housing units across the state.

12 **Q.** You don't specifically recollect which ones you did or did
13 not?

14 **A.** No.

15 **Q.** Is that because there's so many?

16 **A.** Yes.

17 **Q.** Is it fair to say also that undergoing investigations you
18 don't specifically recollect with whom precisely you visited
19 with, whom you talked with, and the allegations that were made
20 with regard to each of the visits?

21 **A.** That's certainly true.

22 **Q.** In fact, that's a reason why you record what actually
23 happens during your visit, correct?

24 **A.** Correct.

25 **Q.** Ms. Zimbelman, I'm going to switch gears now from your

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1 actual general background and your job duties at the
2 ombudsman's office to this case. Are you aware in this case
3 that my client, Mr. Griffin, is alleging that he met with you
4 during one of your investigations and that as a result of
5 participating in that investigation the three defendants
6 sitting to my left retaliated against him, among other ways, by
7 verbal abuse and then also by writing misconduct tickets?

8 **A.** I am aware that that's the base and substance of the
9 claim.

10 **Q.** Now, because you did so many prison visits and
11 investigations, you don't actually have a mental picture of
12 Mr. Griffin walking in or speaking with you, correct?

13 **A.** Correct.

14 **MR. HUBBARD:** Permission, Your Honor, to approach the
15 witness?

16 **THE COURT:** You may.

17 **BY MR. HUBBARD:**

18 **Q.** Ms. Zimbelman, I have handed to you an exhibit that's been
19 marked as Plaintiff's Proposed Exhibit 59. If you could just
20 take a brief moment and look at it. There's two pages there.

21 My first question for you is simply, do you recognize this
22 document?

23 **A.** Yes.

24 **Q.** Will you please tell the jury what it is.

25 **A.** This is a printout from the database we use to track cases

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1 as well as with the ombudsman's office. There are several
2 fields that are filled out regarding who the prisoner is making
3 the complaint, where he or she is now, what happened, a brief
4 description of the case, and several fields for different
5 contacts or steps that were taken in the investigation.

6 **Q.** And you see in the upper left-hand corner where it says
7 "Case Information"?

8 **A.** Yes.

9 **Q.** And immediately below that is reference to a "Case
10 Number," correct?

11 **A.** Correct.

12 **Q.** And this is important, but below that is the name of a
13 prisoner; do you see that?

14 **A.** I do.

15 **Q.** And can you please tell the jury what the name of that
16 prisoner is.

17 **A.** Jeffrey Bryant.

18 **THE COURT:** Is this document in evidence?

19 **MR. HUBBARD:** I'm sorry, Your Honor?

20 **THE COURT:** Is it in evidence?

21 **MR. HUBBARD:** Your Honor, we have established
22 authenticity. I'm pleased to offer the exhibit into evidence
23 as Exhibit 59.

24 **THE COURT:** Anybody object from either side?
25 Mr. Schneider.

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1 **MR. SCHNEIDER:** Just one moment. I'm reading the
2 document, Your Honor.

3 No objection, Your Honor.

4 **THE COURT:** It's received as -- 59?

5 **MR. HUBBARD:** Yes, Your Honor.

6 **THE COURT:** It's received, Plaintiff's 59, in
7 evidence.

8 Go ahead.

9 **MR. HUBBARD:** Thank you, Judge.

10 **BY MR. HUBBARD:**

11 **Q.** The prisoner's name that's on the document in the upper
12 left-hand corner says "Jeffrey Bryant." You would agree with
13 that?

14 **A.** Yes.

15 **Q.** And what was the location just below that?

16 **A.** The location the issue arose from was Gus Harrison
17 Correctional Facility.

18 **Q.** What's the significance of Jeffrey Bryant's name being
19 right next to "Prisoner"? I mean why is that entry there?

20 **A.** It's, it's one of many fields. If I recall, when this
21 database was being created we wanted to be able to run reports
22 and to do that you had to have different fields, and having a
23 prisoner's name would allow us as staff to be able to search
24 any other complaints, I mean, and you call people by their
25 names. We definitely corresponded with our individual people

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1 that were complaining, and I'm not going to call them by a
2 prison number. I'm going to call him Mr. Bryant.

3 Q. And is it because this particular case that we're looking
4 at on Exhibit 59 is about Prisoner -- Mr. Bryant?

5 A. Can you repeat that?

6 Q. You would agree that the document that we're looking at
7 here and the entries that follow actually relate to Mr. Bryant,
8 correct?

9 A. Yes.

10 Q. Okay. And that's because in the upper left-hand corner
11 where it says "Case Information," that's what this is about,
12 Mr. Bryant?

13 A. Yes.

14 Q. Below that, about the middle of the page, it says
15 "Actions." Do you see that?

16 A. Yes.

17 Q. And below that is "Contactor," and to the right, "Date,
18 Action, Contact Type, Contactee." Do you see all of that?

19 A. Yes.

20 Q. Could you please turn to Page 2.

21 A. Yes.

22 Q. The second entry so happens to start with your name,
23 Ms. Zimbelman. Do you see that?

24 A. I do.

25 Q. And can you tell the jury what the date is to the right of

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1 that?

2 A. February 9, 2011.

3 Q. And two more columns to the right, what does it say?

4 A. "Visit."

5 Q. What does that signify?

6 A. It means that I did an in-person visit with the prisoner.

7 Q. And below your name there are two paragraphs. Do you see
8 it?

9 A. I see four paragraphs.

10 Q. Forgive me. You are indeed correct. I say two because I
11 desire to have you look at the second.

12 A. Okay.

13 Q. And the second paragraph reads, "Griffin -- Mr. Griffin,
14 my client -- Prisoner Number 196968, stopped in during the
15 interview and said they were really harassing Bryant," and it
16 goes on to say that, "ADW Chapman said it was a racist facility
17 but there was nothing they could do." Do you see that?

18 A. I do.

19 Q. And these are notes that you actually placed into this
20 document, correct?

21 A. Correct.

22 Q. And they are essentially done contemporaneously with your
23 visit once you got back to the office and taken from your
24 notepad, correct?

25 A. Yes, but there were times when I would do visits on

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1 Fridays and I would not enter my notes into the computer until
2 Monday. I have no specific recollection of sitting at my
3 computer typing my notes in with this particular entry so I
4 can't say for sure when I did that, but it would usually be the
5 next business day I was in the office.

6 **Q.** Perhaps more importantly is my next question. Do you have
7 any reason to believe that the notes that you placed in here
8 regarding Mr. Griffin coming in to visit you on February 9th,
9 2011 to be untrue?

10 **A.** No.

11 **Q.** So you believe them to in fact be true, correct?

12 **A.** Yes.

13 **Q.** Ms. Zimbelman, after three and-a-half years at the
14 ombudsman's office and after investigating and visiting 35
15 different prison facilities, how many facilities in the State
16 of Michigan did you actually undergo and produce a report on?

17 **A.** If your question is how many reports I did about a
18 facility-wide issue, I would say that to the best of my
19 recollection it was one.

20 **Q.** And when you say a facility-wide issue, what do you mean?

21 **A.** There were a lot of reports or letters or actions I would
22 take and reports I would write that may be about a discrete
23 issue. For example, I remember one case I worked on that was a
24 medical issue about an individual that needed a knee
25 replacement. There was a lot of investigation and report

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1 writing done there, and it was a problem with a facility
2 position so that would be a facility investigation in my mind,
3 but it wasn't about the whole -- it was a very discrete issue.
4 I also did one report on the Michigan Department of Corrections
5 security classification system. That was more of a central
6 office report type issue.

7 So there were various reports done on discrete issues or
8 more policy based, but about a facility in and of itself and
9 repetitive issues that we were hearing from prisoners, one.

10 Q. And when you say "widespread" I believe is your word, do
11 you use that terminology because the report was relative to
12 issues and problems that you viewed permeated the entirety of
13 the facility?

14 MR. SCHNEIDER: Your Honor, I'm going to object to
15 lack of relevance. I think she's here to testify about this
16 one investigation.

17 THE COURT: I think I will agree with Mr. Schneider.
18 I don't -- maybe there's something here I don't understand, but
19 right now I don't understand why declaring something widespread
20 is going to help the jury.

21 MR. HUBBARD: Your Honor, that's actually --

22 THE COURT: So I'm, I'm accepting the objection.

23 MR. HUBBARD: I think for now, Your Honor, that's a
24 fair comment and ruling by the Court, but I'll cut right to the
25 chase and it's because of a question that I actually haven't

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1 asked yet and I think it will make it directly relevant to this
2 particular case.

3 **BY MR. HUBBARD:**

4 **Q.** The one report that you did, Ms. Zimbelman, out of all of
5 the investigations regarding a facility, what facility was
6 that?

7 **A.** Gus Harrison Correctional Facility.

8 **Q.** That's the same facility that Mr. Griffin was actually
9 located in. You are aware of that, correct?

10 **A.** Correct.

11 **Q.** And the report that you did was for the time period 2009
12 until February 2011 is when you actually issued the report,
13 correct?

14 **MR. SCHNEIDER:** Same objection, Your Honor, as to
15 relevance. The report has nothing to do with this case.

16 **MR. HUBBARD:** It certainly does have something --

17 **THE COURT:** Overruled at least now unless we go into
18 waters that are undisturbed thus far. You can go ahead.

19 **MR. HUBBARD:** Thank you, Your Honor. The testimony
20 will establish as we go forward that the permeating problem at
21 the same facility in which my client was located in at the time
22 of the alleged allegations happens to be reported on as the
23 same exact conduct that my client complains of. So I
24 appreciate the objections by counsel, but counsel knows exactly
25 where I'm going with this and he knows exactly what the report

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1 is, and soon I will seek to admit the report.

2 **MR. SCHNEIDER:** Your Honor, I had an objection, we
3 had a ruling, and I don't know what this is now so if we could
4 move on with the questioning I would appreciate that.

5 **THE COURT:** What did you say?

6 **MR. SCHNEIDER:** Your Honor, I had an objection. We
7 already had a ruling. I object now to the speech by counsel
8 here.

9 **THE COURT:** I, I'm not sure I understand where it's
10 going here, but I won't overrule you right now, but I don't
11 know that I'll let you go much farther.

12 **MR. HUBBARD:** Permission to approach the witness,
13 Your Honor, with the report.

14 **THE COURT:** Yes. Are you offering this in evidence
15 or is it for the purpose of refreshing recollection?

16 **MR. HUBBARD:** If I may, Your Honor, actually
17 establish a foundation, then I'll seek to have it admitted as
18 an exhibit into evidence.

19 **MR. SCHNEIDER:** What exhibit?

20 **MR. HUBBARD:** Exhibit Number 44.

21 **BY MR. HUBBARD:**

22 **Q.** Ms. Zimbelman, the one report that you did relative to Gus
23 Harrison Correctional Facility, I have presented to you Exhibit
24 Number 44. Do you recognize that document?

25 **A.** I do.

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1 Q. And can you please explain for us what that document is?

2 A. This is a report that I wrote. It's dated February 14th,
3 2011. It is on Gus Harrison Correctional Facility, the south
4 side. There are two sides to Gus Harrison Correctional
5 Facility that are essentially different prisons. This report
6 was focused by and large on the south side.

7 This is a report that I compiled over a couple of years,
8 according to my notes. I don't have any independent
9 recollection of the time frame of this investigation, but it
10 was about a large number of complaints coming from prisoners
11 about their treatment at Gus Harrison Correctional Facility
12 South.

13 Q. And before we get into the specific allegations and just
14 to lay further foundation, Your Honor, as to the relevance of
15 the document, does this particular report contain allegations
16 directed at any of the defendants?

17 A. Yes.

18 MR. HUBBARD: Your Honor, at this time I move to
19 admit this particular exhibit into evidence. If Your Honor
20 desires to have a sidebar relative to counsel's objections, I'm
21 pleased to have that.

22 THE COURT: Not necessarily about this, but I
23 certainly will let this go at this point. I'm a little bit
24 puzzled as to what, what evidence this has that the jury is
25 going to be helped by, but maybe there's something in review

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1 will be there as a result of reading or reporting on this
2 document we'll know, and Mr. Schneider is objecting.

3 **MR. SCHNEIDER:** I am, Your Honor. Do you want my
4 objection on the record?

5 **THE COURT:** It can be on the record later if you want
6 it to be, but I don't need it on the record right now.

7 **MR. SCHNEIDER:** Okay.

8 **THE COURT:** So go ahead. Overruled.

9 **MR. HUBBARD:** Thank you, Your Honor.

10 If I may, I would actually like to present the document up
11 here, and Ms. Hess has the capability of doing that so that
12 when I'm asking the witness as to particular documents I would
13 like for the jury to actually be able to see it.

14 **THE COURT:** I'm confused, and maybe this information
15 has just come into my possession and I'm -- I have no right to
16 be confused about it, but did this just get admitted?

17 **MR. HUBBARD:** I moved for its admission, Your Honor,
18 counsel I believe stated its objection, and I think the
19 document is indeed admitted into evidence.

20 **MR. SCHNEIDER:** Your Honor, I would like to place my
21 objection on the record. It's hearsay, and Rule 403 requires
22 exclusion of this document. If you have a copy of the
23 plaintiff's exhibit book up there, I would request that you
24 review the document before ruling on it. I don't think that it
25 has anything to do with this case.

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1 **MR. HUBBARD:** Your Honor, if I may --

2 **THE COURT:** I'm not going to review it with the jury
3 sitting here. I might review it later and give the corrective
4 instruction to the jury, but I think this is getting too
5 complicated. I know what we're talking about on both sides of
6 this and the issue is something reported in a document that
7 happened that's relevant to what the parties are arguing about
8 here and if indeed it's admissible and if indeed it's not
9 admissible, and if it turns out that this is objectionable for
10 some reason, I am confident an effective corrective instruction
11 can be given to the jury.

12 **MR. HUBBARD:** Thank you, Your Honor. Just to follow
13 up, given the significance of this document, I actually have a
14 pocket brief for the Court's consideration. It's just
15 five pages.

16 In response to the hearsay objection, the pocket brief
17 sets forth that indeed the document is not hearsay underneath
18 803(8) because this is a public report. This is a report that
19 was done via authorized investigation by a statute. Under
20 803(8) that document comes in.

21 Regarding the objection of relevance and probative value,
22 underneath 404(b) the document comes in again. Underneath
23 404(b) you can introduce evidence regarding a plan or
24 conspiracy or scheme regarding which the conspiracy pertained
25 to. So, for example, if there are or is a larger plan or

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1 scheme going on, which this document reports about, of which
2 the allegations that are being made in this case are a part of,
3 then indeed the document is admissible for that purpose.

4 So I appreciate Your Honor allowing me to state that for
5 the record, but I can assure the Court and the jury that indeed
6 this document is very relevant to this case.

7 **THE COURT:** Very well. You have made your record and
8 I think Mr. Schneider pretty much has indicated what problem he
9 has with it, and to the extent there's an objection, it's
10 overruled.

11 **BY MR. HUBBARD:**

12 **Q.** Ms. Zimbelman, this is a report that was actually prepared
13 by you, correct?

14 **A.** Correct.

15 **Q.** And the date you will see at the upper left-hand corner is
16 February 14, 2011, correct?

17 **A.** Correct.

18 **Q.** And you will recall that the date of Mr. Griffin's visit
19 with you at that particular facility was dated February 9th,
20 2011, correct?

21 **A.** Correct.

22 **MR. HUBBARD:** I would like to -- Your Honor, for ease
23 of the process, may I approach the screen and step away from
24 the podium just to assist Ms. Hess in terms of which portions I
25 would like for her to zoom in on?

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1 **THE COURT:** You can at least preliminarily. I,
2 especially where there's a jury present, we are asking the jury
3 to do something, which we are, I am very reluctant to say this
4 paragraph has 350 words in it, will you read it or maybe it has
5 several more pages and I'm not going to let that go to the jury
6 as something that they implicitly have to grasp and understand.
7 If this does something and it can be described in a fairly
8 brief way, certainly this witness or someone else or whatever
9 is appropriate can happen to describe it, but if you're headed
10 toward taking a five-page document and putting it in the record
11 by somebody reciting it, I'm a little bit, little bit
12 antagonistic to that if you understand what I'm saying.

13 **MR. HUBBARD:** I certainly do, and I respect the
14 Court's comments. Your Honor, I think that this will take no
15 more than five minutes.

16 **THE COURT:** Okay.

17 **MR. HUBBARD:** Thank you, Judge.

18 **THE COURT:** It's certainly not five pages.

19 **MR. HUBBARD:** No, but I'll cut right to the chase.

20 Ms. Hess, could you please zoom in on the first
21 two sentences, please. Three actually.

22 **BY MR. HUBBARD:**

23 **Q.** Ms. Zimbelman, you have a computer screen in front of you?

24 **A.** Yes.

25 **Q.** And it says here, "Background: The Corrections Ombudsman

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1 office has been engaged in an ongoing investigation of
2 ARF-South since March 2009."

3 Do you see that?

4 **A.** I do.

5 **Q.** And, "Through multiple interviews with prisoners early on,
6 a pattern of staff misconduct and verbal abuse became
7 apparent."

8 Do you see that?

9 **A.** Yes.

10 **Q.** Do you stand by that statement?

11 **A.** Yes.

12 **MR. HUBBARD:** Could you go down, Ms. Hess, to "it is
13 our position."

14 **BY MR. HUBBARD:**

15 **Q.** And do you see just below that, Ms. Zimbelman, where it
16 says, "It is our position that the similarity and volume of the
17 complaints indicate their accuracy"?

18 **A.** Yes.

19 **Q.** Do you stand by that statement?

20 **A.** Yes.

21 **Q.** And it goes on, "While some of the staff members may only
22 have one complaint listed, it appears there is a widespread
23 problem with attitude and humane treatment of prisoners."

24 Do you see that?

25 **A.** Yes.

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1 Q. And you stand by that?

2 A. Yes.

3 MR. HUBBARD: The next page, please, Ms. Hess. And
4 if you could please zoom in there, Ms. Hess.

5 BY MR. HUBBARD:

6 Q. If you could turn to the next page, Ms. Zimbelman. In
7 fact, I think you have a copy of it in front of you or on the
8 computer screen, and it says, "RUM Condon (ARF-North)." Do you
9 see that?

10 A. Yes.

11 Q. And you know that RUM Condon appears to be a defendant in
12 this case, correct?

13 A. Yes.

14 Q. And during your investigation RUM Condon received a
15 "generalized complaint of harassment" and that he "grabbed a
16 prisoner by the wrist." Do you see that?

17 A. Yes.

18 Q. Do you stand by the fact that you received those
19 complaints?

20 A. Yes.

21 MR. HUBBARD: Mr. McMurtrie, please.

22 BY MR. HUBBARD:

23 Q. Do you see where it says "Mr. McMurtrie"?

24 A. Yes.

25 Q. "Officer McMurtrie," sorry. I don't mean to be

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1 disrespectful.

2 "Officer McMurtrie (ARF-North). 1, Generalized complaint
3 of harassment," and then it goes on to say, "Correctional
4 Officer McMurtrie told other prisoners that a certain prisoner
5 was 'bad news' and he was going to get 'his ass.' Corrections
6 Officer McMurtrie wrote several tickets on him and told the
7 prisoner it didn't matter if he wrote grievances because they
8 wouldn't 'stick.'"

9 Do you see that?

10 **A.** Yes.

11 **Q.** Do you stand by the fact that you actually received those
12 complaints while undergoing your investigation?

13 **A.** Yes.

14 **MR. HUBBARD:** If you could go straight to the
15 conclusions.

16 **BY MR. HUBBARD:**

17 **Q.** Now, while we're going to the conclusion, Ms. Zimbelman,
18 and I'm not going to question you on it, but you would agree
19 that within this report that there are over 40 correctional
20 officers that are listed in here as having complaints made
21 against them, correct?

22 **A.** I have not read the report in its entirety lately, and I
23 don't -- I haven't counted the number of officers so I can't
24 answer that.

25 **Q.** Fair enough.

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1 **MR. HUBBARD:** If you could highlight the "Summary of
2 Observations" all the way up to 4, please.

3 **BY MR. HUBBARD:**

4 **Q.** Ms. Zimbelman, on Page 13 of the report there is a
5 "Summary of Observations," and is it fair to say that those are
6 the summary of your observations as having undergone the
7 investigation at Gus Harrison Facility?

8 **A.** Correct.

9 **Q.** And it says, "While the number of isolated incidents of
10 harassment is disturbing, there are some general trends, excuse
11 me, some general patterns and trends at ARF-South that the
12 Ombudsman's office feels must be addressed."

13 Do you see that?

14 **A.** Yes.

15 **Q.** Do you stand by that statement today?

16 **A.** Yes.

17 **Q.** "Furthermore," it goes on to say, "this attitude appears
18 to be permeating ARF-North in recent months."

19 Do you see that?

20 **A.** Yes.

21 **Q.** And do you stand by that statement?

22 **A.** Yes, that I, at the time I wrote this, I believed that --
23 I believed that, yes.

24 **Q.** "1. Prisoners are retaliated against for filing
25 grievances. The retaliation forms include verbal abuse,

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1 constant shakedowns and minor tickets."

2 Do you see that?

3 **A.** Yes.

4 **Q.** And do you stand by that conclusion that you drew?

5 **A.** Yes.

6 **Q.** "2. Officers use minor tickets as a weapon to keep many
7 prisoners on constant sanctions and threaten their paroles,
8 based on resulting major tickets, like Out of Place tickets."

9 Do you see that?

10 **A.** Yes.

11 **Q.** Do you stand by that today?

12 **A.** Yes.

13 **Q.** "4. Sex offenders and African Americans appear to be the
14 most frequent target of verbal abuse."

15 Do you see that?

16 **A.** Yes.

17 **Q.** And you stand by that statement?

18 **A.** Yes.

19 **MR. HUBBARD:** One last section, Ms. Hess. Underneath
20 "Recommendation," if you could pull that up.

21 **BY MR. HUBBARD:**

22 **Q.** "Recommendation." It says, "While we realize some of the
23 involved officers now work on the north side, it does not
24 appear the attitudes on the ARF complex -- that's Gus
25 Harrison -- will change with a simple move next door."

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1 Do you see that?

2 **A.** Yes.

3 **Q.** And you stand by that statement?

4 **A.** Yes.

5 **Q.** And you would agree with me that when we looked at the
6 specific complaints made against Officer Condon and Officer
7 McMurtrie that immediately next to them was in parentheses
8 "ARF-North"?

9 **A.** Correct.

10 **Q.** And that's because they were indeed at the time you wrote
11 this report either already there or to your knowledge being
12 placed there to the north side, correct?

13 **A.** My understanding or recollection is that they were working
14 on the north side at the time the complaints came in from the
15 prisoners.

16 **Q.** Understood. Ms. Zimbelman, one final question for you,
17 and, again, thank you for being here because I do know that
18 it's difficult. Did you write the report because you felt you
19 were compelled to do it and that underneath the statute you had
20 to do it?

21 **A.** I did not feel -- that almost makes it seem like the
22 statute made me an unwilling participant. I felt that the, as
23 indicated in the introductory paragraph of the report, I felt
24 that the number of complaints, their similarity, that it needed
25 to be brought to the attention of the facility staff of the

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1 Gus Harrison Correctional Facility, the warden and that people
2 in the MDOC needed to be aware of what prisoners were saying
3 was happening.

4 **Q.** Ms. Zimbelman, thank you very much. Opposing counsel may
5 well have questions for you, at which time I may have redirect,
6 but thank you again.

7 **THE COURT:** Mr. Schneider, cross.

8 **MR. SCHNEIDER:** Thank you, Your Honor.

9 - - -

10 (11:59 a.m.)

11 **CROSS-EXAMINATION**

12 **BY MR. SCHNEIDER:**

13 **Q.** Ms. Zimbelman, this report that you were just asked about,
14 did you actually submit that to the MDOC?

15 **A.** I honestly don't remember who exactly I submitted it to.
16 I know that it had the approval of my boss, and I remember
17 having a meeting with the warden. I don't even remember which
18 warden it was so I don't actually know who received this
19 report.

20 **Q.** Okay. Do you remember when you had that meeting with the
21 warden he asked you, well, who is making these complaints?

22 **A.** I don't remember that.

23 **Q.** That exhibit book there in front of, can you flip to
24 Exhibit 4, please.

25 **A.** The report?

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1 Q. Yeah, it's the report, but if you go beyond the report --
2 so the report is, what, 13 pages long?

3 A. Yes.

4 Q. Okay. And then just behind that there is some other
5 paperwork there. Do you see that?

6 A. I do see that.

7 Q. Okay. Are you familiar with that paperwork at all?

8 A. It looks vaguely familiar, but I haven't seen this in
9 almost six years.

10 Q. Okay. At any time did you tell the prison who was making
11 these complaints, these allegations?

12 A. I believe in the first paragraph of my report it said the
13 prisoners are.

14 Q. Which prisoners though? Did you tell the prison which
15 prisoners?

16 A. I believe the report says we kept them anonymous to keep
17 them from further retaliation.

18 Q. Okay. So nobody at the prison knew who was talking to
19 you?

20 A. I don't know what the department knew about who was
21 talking to me. As I discussed earlier, if I was going to a
22 prison, I would send a list of names and numbers to the
23 administrative assistant.

24 Q. At Gus Harrison who was your contact person?

25 A. I don't remember the name.

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1 Q. But it was the administrative assistant?

2 A. Usually.

3 MR. HUBBARD: Objection, Your Honor, asked and
4 answered.

5 BY MR. SCHNEIDER:

6 Q. When you would do these interviews with the prisoners --

7 THE COURT: I think he went right on, but go ahead.

8 MR. SCHNEIDER: I did, Your Honor.

9 BY MR. SCHNEIDER:

10 Q. You called this an investigation, correct?

11 A. Yes.

12 Q. All right. You would interview the prisoners, correct?

13 A. Are you talking about my general practice or --

14 Q. I want to talk specifically about this Gus Harrison report
15 that you did. You interviewed the prisoners, correct?

16 A. My recollection is, yes, I interviewed them.

17 Q. Okay. And they would have some kind of allegation some
18 officer mistreated me, correct?

19 A. That's my general recollection.

20 Q. Okay. Would you then go talk to the officer?

21 A. No.

22 Q. Would you go get video to see if the incident really
23 happened?

24 A. I believe that in some cases if there -- you know, the
25 video capability of the Michigan Department of Corrections are

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1 safely guarded, not disclosed, but our office had access to
2 those. Again, I'm speaking I don't have any specific
3 recollection of investigating any particular claim made by a
4 prisoner besides what I have seen in this report, but if there
5 is relevant video, we would certainly request that.

6 **Q.** With regard to prisoner Bryant, do you have Exhibit 59
7 still there?

8 **A.** Yes.

9 **Q.** Okay. Those are your notes about that particular
10 incident, right?

11 **A.** Yes.

12 **Q.** Okay. Did you note anywhere in there that you requested
13 video about this?

14 **THE COURT:** If there is or there isn't, we don't have
15 to search for it.

16 **THE WITNESS:** I don't believe that I did.

17 **BY MR. SCHNEIDER:**

18 **Q.** Just to be clear again, this report, this 13-page report
19 that you wrote, these allegations are listed out by the name of
20 each corrections officer, correct?

21 **A.** Correct.

22 **Q.** And these allegations, it's just what prisoners told you?

23 **A.** Yes.

24 **Q.** You didn't witness any of these things happening?

25 **A.** Correct.

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1 Q. You received a letter from a prisoner and it goes in the
2 report?

3 A. No, I would say that I believe -- again, this is to the
4 best of my recollection -- I believe that in the report it also
5 says that there were over 100 claims made that were too
6 specious to include in the report. Those might have been based
7 on just letters. I believe on all of the allegations I
8 included in the report I actually spoke to these prisoners to
9 the best of my recollection.

10 Q. Okay. Do you know how many prisoners you spoke to?

11 A. No, but I believe the report indicates there were
12 47 complaints or something like that.

13 Q. Did you ever meet any of those officers whose names you
14 put in this report?

15 A. I did not meet with them to discuss things, but I may have
16 run into them in the housing unit or while I was otherwise
17 visiting Gus Harrison.

18 Q. Could you identify any of them if you met them?

19 A. I don't think so. Probably not now.

20 Q. How about these three fellas sitting over here, can you
21 identify any of them?

22 A. No.

23 Q. At Page 2 of the report, this is where there's the
24 two allegations listed against RUM Condon. Number one, it
25 says, "Generalized complaint of harassment." So who made that

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1 claim against RUM Condon?

2 A. I don't know.

3 Q. What was the complaint because "generalized complaint of
4 harassment" doesn't tell us much.

5 A. I don't remember.

6 Q. You have no idea what happened?

7 A. Six years later I don't know.

8 Q. The same is true with Officer McMurtrie? Yeah, Officer
9 McMurtrie is in here as well. The same is true of that, you
10 don't remember who made the complaint or what those facts were?

11 A. That's correct.

12 Q. You have testified you have been around to other prisons
13 in the state. Did you receive letters from prisoners across
14 the state?

15 A. Oh, yeah.

16 Q. When you were in that job?

17 A. Yes.

18 Q. Is that common for a prisoner to write you, for instance,
19 we are getting retaliatory tickets?

20 A. Yes.

21 Q. All across the state though, not just --

22 A. Yes.

23 Q. You said that in the conclusion of your report one of the
24 prisoner's complaints that you came across a lot was that they
25 were getting minor tickets that would essentially delay their

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1 parole, correct?

2 **A.** Yes.

3 **Q.** Do you know, are you familiar with how the parole system
4 works?

5 **A.** Yes.

6 **Q.** And major tickets are those that affect the parole,
7 correct?

8 **A.** Well, actually the misconduct system in the Michigan
9 Department of Corrections was recently -- well, not recently --
10 while I was with the ombudsman's office switched from being
11 called major tickets and minor tickets to where now they have a
12 class system where it's Class 1, Class 2, Class 3. So it's a
13 little bit of a different system now as when this report was
14 written when they were still called majors and minors.

15 **Q.** Back then they were majors and minors?

16 **A.** Uh-huh.

17 **Q.** But minor tickets did not affect the parole, did they?

18 **A.** I don't believe that's a fair statement. The effect of a
19 minor ticket on a prisoner's stay and general work reports and
20 other -- there's so many repercussions of those in the
21 department that I do believe that a minor ticket could affect a
22 parole decision.

23 **Q.** There's a point system for major tickets in the prison,
24 correct?

25 **A.** Yes.

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1 Q. And a parole decision looks at the past six months of
2 major tickets, correct?

3 A. I don't think that's a fair statement.

4 Q. Do you know what the policy directive, what the number is
5 for the policy directive on parole?

6 A. No.

7 Q. Are you familiar with that policy directive?

8 A. I'm familiar with it, but I can't specifically say what a
9 parole board member reviews or takes into account in making a
10 parole decision.

11 Q. There's a policy though that specifies the points that
12 they get for major tickets, correct?

13 A. Well, I know there's points on the security classification
14 screen, and I believe there's points in the parole guideline
15 score. Those are simply, however, factors, from my
16 understanding, and I'm not an expert on the parole process. I
17 have been around it a lot, but my understanding is that the
18 parole guideline score is one tool that the parole board uses
19 to determine whether a prisoner has a high probability of
20 parole or a low probability of parole or an average
21 probability.

22 So my understanding would be that, yes, the points, if you
23 are specifically asking about points for tickets, my
24 recollection is that on the parole guideline score, which is
25 the only parole tool that uses points, that that would focus on

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1 majors.

2 **Q.** And that parole guideline score, that's the score that
3 determines whether they are at a high probability of parole,
4 average or low?

5 **A.** Correct.

6 **Q.** All right.

7 **MR. SCHNEIDER:** I don't have any further questions.
8 Thank you.

9 **THE COURT:** Anything further of this witness?

10 **MR. HUBBARD:** Just one question, Your Honor. Well,
11 actually two.

12 **THE COURT:** That's probably more accurate.

13 **MR. HUBBARD:** Back to the lawyer comment.

14 - - -

15 (12:09 p.m.)

16 **REDIRECT EXAMINATION**

17 **BY MR. HUBBARD:**

18 **Q.** Mr. Schneider asked you is it fairly common to get
19 complaints from prisoners. Do you recall that?

20 **A.** Yes.

21 **Q.** To which you responded with, yes, it is fairly common,
22 correct?

23 **A.** Yes.

24 **Q.** But what's not common is that the complaints are so
25 similar in kind that you write a report on a particular

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1 facility, and in this case you only did one of those in three
2 and-a-half years, correct?

3 **A.** I myself only did one report like this, correct.

4 **Q.** Thank you.

5 **MR. HUBBARD:** No further questions, Judge.

6 **THE COURT:** Do you have any further, Mr. Schneider?

7 **MR. SCHNEIDER:** Yes, Your Honor.

8 - - -

9 (12:10 p.m.)

10 **RECROSS-EXAMINATION**

11 **BY MR. SCHNEIDER:**

12 **Q.** How many analysts worked in the Legislative Corrections
13 Ombudsman's office back then?

14 **A.** It varied, and I can't tell you exactly how many. When we
15 started, there were only two of us. When I started in
16 February 2009, there was only one other analyst. I believe it
17 was that way for quite some time. There's been anywhere from
18 two to eight analysts.

19 **Q.** Between the period February 2009 and July 2012, it varied
20 between two and eight?

21 **A.** Yes, to the best of my recollection.

22 **MR. SCHNEIDER:** All right. Thank you.

23 **THE COURT:** Anything further from the plaintiff's
24 point of view?

25 **MR. HUBBARD:** Your Honor, other than to thank

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1 Ms. Zimbelman again, nothing further.

2 **THE COURT:** Thank you. You are excused.

3 **THE WITNESS:** Thank you.

4 **THE COURT:** And it would be time for another witness
5 if we had time for one. I don't know what, what the
6 plaintiff's pleasure is.

7 **MR. MOODY:** Your Honor, may we request just a very
8 quick recess to confirm our next witness is out in the hallway?
9 I haven't spoken to them since the last break.

10 **THE COURT:** I'm sorry, a recess?

11 **MR. HUBBARD:** Just a five-minute recess, Your Honor,
12 if we could.

13 **THE COURT:** I didn't understand. You want a recess?

14 **MR. MOODY:** Yes, Your Honor, a short break to confirm
15 the next witness is in the hallway so that we may call him.

16 **THE COURT:** Oh, you can call him if he's out there.
17 We always wait for whoever.

18 **MR. MOODY:** All right. Thank you, Judge. I'll be
19 right back.

20 **THE COURT:** Everybody here, we have basically gotten
21 away with quite a bit today with no coffee, and that's better
22 than it was before and we'll get another witness in if you --

23 **MR. MOODY:** All right. Thank you.

24 **THE COURT:** This witness is going to be
25 Larry Anthony?

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MR. FINK: I'm sorry, Your Honor?

MR. FINK: Larry Anthony will be next, Your Honor.

Would you come in, please, and take the oath from the court reporter.

THE COURT: Thank you.

LARRY ANTHONY,

THE COURT: Thank you. Please be seated.
You may proceed.

(12:13 p.m.)

BY MR. MOODY:

A. Good afternoon.

A. Larry Lee Anthony, Jr.

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1 prison?

2 A. Yes.

3 Q. Were you ever an inmate at the Gus Harrison Correctional
4 Facility?

5 A. Yes.

6 Q. What time period was that?

7 A. From 2009 to 2016.

8 Q. Are you currently incarcerated?

9 A. No.

10 Q. You are a free man?

11 A. Yes.

12 Q. Do you know the plaintiff in this matter, Randle Griffin?

13 A. Yes.

14 Q. How do you know Mr. Griffin?

15 A. He was the black rep committee.

16 Q. You said the black rep committee?

17 A. Yes.

18 Q. Is that also called the warden's forum?

19 A. Yes.

20 Q. Were you a member of the warden's forum?

21 A. Yes.

22 Q. What position did you hold on the warden's forum?

23 A. I think I was in charge of health care issues.

24 Q. Okay. Were you a member of the warden's forum between the
25 time period of January to March 2011?

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1 **A.** Yes.

2 **Q.** Okay. I want to direct your attention specifically to
3 March 2nd, 2011. Do you remember that date?

4 **A.** Not really. Not exact date, but ...

5 **Q.** Good point. In early March 2011 do you recall having a
6 conversation with RUM Condon regarding issues raised at the
7 warden's forum?

8 **A.** Yes.

9 **Q.** Okay. Where did you have that conversation?

10 **A.** In the RUM's office.

11 **Q.** Who was present?

12 **A.** Just me and Griffin and RUM, RUM Condon.

13 **Q.** Okay. And then did you discuss issues raised at the
14 warden's forum?

15 **A.** Yeah. That's where we discuss them before we go up.

16 **Q.** And after that meeting concluded, did you and Mr. Griffin
17 leave RUM Condon's office?

18 **A.** I did.

19 **Q.** And where did you go from there?

20 **A.** To the laundry room.

21 **Q.** Okay. And after you went over to the laundry room, did
22 you happen to hear any other conversations between officers?

23 **A.** Yeah. I was standing -- after that it was my job to be
24 laundry man. I was standing in the doorway, and RUM Condon
25 come out of his office. He was kind of upset. Griffin come

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1 out, RUM Condon. Condon went to the desk and said that he
2 pretty much wanted to get rid of Griffin, and I don't know why,
3 but ...

4 Q. Who did he say that to?

5 A. Mr. McMurtrie and Mr. Downard.

6 Q. Those are the two defendants sitting at the table over
7 here?

8 A. Yeah.

9 Q. And did Officer McMurtrie and Officer Downard have any
10 response to that?

11 A. Yeah. They said they could write him a ticket and get him
12 out of there, a misconduct.

13 Q. By write him a ticket, is it your understanding that they
14 were writing false misconduct tickets?

15 A. Yeah.

16 Q. Was it your understanding that it was as a result of RUM
17 Condon telling them that he was tired of Mr. Griffin?

18 A. Yeah.

19 Q. Did you say anything in response to that?

20 A. Yeah. I said, "That's kind of bogue." They told me to
21 shut up and go back and do the laundry or I would get a
22 misconduct ticket.

23 Q. They told you you would get a false misconduct ticket if
24 you kept talking?

25 A. Yes.

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1 Q. Do you recall which officer said that specifically?

2 A. No.

3 Q. But it was either Officer Downard or Officer McMurtrie?

4 A. Yes.

5 Q. In your time at Gus Harrison was there a culture amongst
6 the officers in your opinion of writing false misconduct
7 tickets?

8 A. Yes.

9 Q. Did you ever spend time in other prisons across the State
10 of Michigan?

11 A. Yes.

12 Q. Would you say that it was a larger problem at Gus Harrison
13 than at those other institutions?

14 A. Yes.

15 Q. After the incident, the conversation you overheard, did
16 you execute an affidavit as to what you saw?

17 A. Yes.

18 Q. And did that affidavit lay out everything that you just
19 testified to?

20 A. Yes.

21 Q. After you did that, were you at all concerned about being
22 retaliated against by the officers?

23 A. No, they wrote him up beyond that so I didn't really fear
24 nothing beyond that. I never thought it would go this far.

25 Q. Is it fair to say that if you report officers inmates, or

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1 you specifically, may fear retaliation for that conduct?

2 **A.** Oh, yeah.

3 **MR. MOODY:** No further questions.

4 **THE COURT:** Thank you.

5 Mr. Schneider, cross-examination.

6 **MR. SCHNEIDER:** Thank you, Your Honor.

7 - - -

8 (12:18 p.m.)

9 **CROSS-EXAMINATION**

10 **BY MR. SCHNEIDER:**

11 **Q.** All right. When did you say you got out of prison?

12 **A.** About 2016.

13 **Q.** Are you still on parole?

14 **A.** I'm on parole.

15 **Q.** You are on parole?

16 **A.** Yes.

17 **Q.** When does that end?

18 **A.** Next year. January of next year.

19 **Q.** Okay. And you served in prison from 2009 to 2016, you
20 testified?

21 **A.** Yes, sir.

22 **Q.** All right. You were in on first-degree criminal sexual
23 conduct and --

24 **MR. MOODY:** Objection, Your Honor.

25 **THE COURT:** What is your objection?

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1 **MR. MOODY:** There's no relevance to Mr. Anthony's
2 prior convictions.

3 **THE COURT:** I think that's true, and I will, I will
4 agree with plaintiff on that.

5 **MR. MOODY:** Judge, may I also ask that the testimony
6 be stricken?

7 **THE COURT:** Oh, well, okay. You can put it in the
8 jury instructions if you want to.

9 **MR. MOODY:** Okay. Thank you.

10 **MR. SCHNEIDER:** Your Honor, do you want my response
11 on the record?

12 **THE COURT:** What? I don't.

13 **MR. SCHNEIDER:** Sure. Rule 609 says the evidence
14 comes in. I'll leave it at that.

15 **THE COURT:** Okay. You got it on the record.

16 **BY MR. SCHNEIDER:**

17 **Q.** All right. On this date when you went into RUM Condon's
18 office, you actually went in there with Mr. Griffin?

19 **A.** Yes.

20 **Q.** All right. And when you left you said you went to the
21 laundry room?

22 **A.** Yes.

23 **Q.** Where was the laundry room?

24 **A.** Right across there's a little kitchenette in there. It's
25 about four-foot wide. You just walk across that to the laundry

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1 room.

2 Q. And how long after that did RUM Condon come out?

3 A. I'm going to guess 20 minutes later, 15, 20 minutes later.
4 I ain't for sure the exact time.

5 Q. Was Mr. Griffin in the office with him that whole
6 20 minutes?

7 A. I believe so. I'm not for sure.

8 Q. What time did all of this occur?

9 A. I don't know. I can't, I can't remember that.

10 Q. You don't know what time of the day even?

11 A. No.

12 Q. Before or after lunch?

13 A. I don't know.

14 MR. MOODY: Asked and answered, Your Honor. He's
15 testified he doesn't know what time of day it was.

16 THE COURT: I'm sorry, what was your objection?

17 MR. MOODY: Asked and answered. Counsel has asked
18 him questions about what time of day. He said he doesn't know.
19 He continues to ask him.

20 THE COURT: Okay. I will not rule on that now. I
21 guess it's unnecessary.

22 Do you have another question?

23 MR. SCHNEIDER: Yes, Your Honor.

24 BY MR. SCHNEIDER:

25 Q. All right. The conversation that you had in the office

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1 with RUM Condon, that was about the meal issue from the
2 warden's forum?

3 A. I believe it was, yes.

4 Q. Okay. That's all you talked about when you were in there?

5 A. That and some leaky pipes. It was just housing unit
6 issues. I ain't quite for sure every agenda or every question
7 that we had.

8 Q. It was warden's forum business though?

9 A. Right. It was a while ago, yeah.

10 Q. And the conversation that you heard, this was RUM Condon,
11 he came up to the officers' desk?

12 A. Yes.

13 Q. All right. And he said -- well, what did he say? Go
14 ahead and tell me.

15 A. He just said he was tired of him and that he wanted to get
16 rid of him pretty much.

17 Q. He didn't say why he wanted to get rid of him though?

18 A. No.

19 Q. Anything else about that conversation that you can recall?

20 A. No.

21 Q. Were you working in the laundry room?

22 A. Yeah, I was the laundry man.

23 Q. What time was your detail for?

24 A. 24-hour detail.

25 Q. I'm sorry?

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1 **A.** I had a 24-hour-a-day detail.

2 **Q.** What does that mean, just work any time?

3 **A.** Any time.

4 **Q.** Did you stay at the laundry room or did you walk over to
5 the officers' desk?

6 **A.** When?

7 **Q.** When you heard this conversation occurring.

8 **A.** I was standing at the laundry room door.

9 **Q.** You didn't go to the desk for some reason?

10 **A.** No.

11 **Q.** How far from the desk is the laundry room door?

12 **A.** About --

13 **THE COURT:** I'm not exactly clear as to what that is,
14 if you get an answer to it, it's going to help the jury with.
15 I think you are asking questions now that are really a waste of
16 time and take up time that doesn't need to be taken, but if you
17 think they are very important, I'll let you go ahead for a
18 while.

19 **BY MR. SCHNEIDER:**

20 **Q.** So how far was it from the laundry room door to the
21 officers' desk?

22 **A.** Maybe ten feet.

23 **Q.** You did an affidavit, two affidavits in this case,
24 correct? One in 2015?

25 **A.** 2015? I might. It's been a while.

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1 Q. Okay. In your affidavit do you remember saying that you
2 walked to the officers' desk to ask for a permanent marker?

3 A. Oh, for a laundry bag probably, yeah.

4 Q. And in your affidavit you said that's why you were there
5 to hear the conversation?

6 A. Right, right, right.

7 Q. Your testimony today was that you were at the laundry room
8 door?

9 A. It's been a while, it's been four years, but I know what I
10 heard.

11 MR. SCHNEIDER: All right. I don't have any further
12 questions.

13 THE COURT: Any further questions from the plaintiff?

14 MR. MOODY: No, Your Honor. Thank you.

15 THE COURT: Mr. Anthony, you are excused, and
16 thank you.

17 THE WITNESS: Thank you.

18 THE COURT: I think we are kind of at the end of the
19 day unless someone has something that needs to be put on the
20 record. Otherwise, I think you've got another night before you
21 come back here at nine o'clock tomorrow morning. I'm happy
22 that apparently there's no, no physical problem for which I was
23 worried about before. It looks like a healthy group. I hope
24 it is.

25 These are the same instructions I gave you yesterday.

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1 **MR. HUBBARD:** Just listening, Your Honor. I'll take
2 a seat.

3 **THE COURT:** Okay. -- I gave you yesterday. Don't
4 let anybody discuss it with you. If they try to do it and
5 won't stop, let me know by sending me a note. Avoid the
6 appearance of impropriety. You must do that. Don't have any
7 conversation with anybody associated with the case, the
8 parties, the lawyers, the witnesses, and people who you may
9 come to recognize as having some connection with the case in or
10 out of the courtroom. Don't talk with anybody about it even to
11 pass the time of day because somebody may look at you and think
12 you are doing something you are not doing because you know you
13 can't do it.

14 Don't communicate with anybody or let anybody communicate
15 with you by cell phone, email, iPhone -- that's the same thing,
16 I guess -- text messaging, with Twitter, anything like a blog
17 or website, chat room, any other kind of what is commonly
18 called social networking.

19 Don't read any newspaper articles. Avoid watching any
20 television stories which might be about the case. Don't do any
21 research or conduct any investigation of the case on your own.

22 Thank you for your attention and for being here at
23 nine o'clock tomorrow morning. I think we are moving ahead
24 pretty fast. I won't make any predictions like we'll be done
25 tomorrow because I don't think we will, but we're moving, and

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1 have a good night, safe night.

2 **THE CLERK:** All rise for the jury.

3 (Jury out at 12:26 a.m.)

4 **THE COURT:** Do the parties have anything they would
5 like the record to reflect at this time?

6 **MR. SCHNEIDER:** Yes, Your Honor. As to Plaintiff's
7 Exhibit 44, I think you said you would let them ask the
8 questions and then instruct the jury later if you decide that
9 that exhibit was not proper. The defense still has objections
10 to that exhibit being admitted into evidence. I don't know if
11 the Court wants to make that ruling now or save it for another
12 day, but I wanted to bring that to the Court's attention.

13 **THE COURT:** I think probably the best thing to do is
14 to give me a chance to look at 44 and to prepare to be
15 responsive in a credible way. We'll do that tomorrow.

16 Anything else?

17 **MR. HUBBARD:** While the Court is undergoing that
18 consideration, I do have a pocket brief that is only five pages
19 long. I can provide to counsel a copy of that that explains
20 underneath Sixth Circuit precedent exactly why that document
21 comes into evidence. I would appreciate if the Court would
22 receive that memorandum of law when undergoing its
23 consideration as to whether or not --

24 **THE COURT:** I'll receive it.

25 **MR. HUBBARD:** Thank you, Your Honor.

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1 **THE COURT:** I assume that Mr. Schneider has a copy of
2 it, too.

3 **MR. HUBBARD:** I just handed it to him, Your Honor.

4 **THE COURT:** And we can determine whether we agree or
5 not on what it says.

6 **MR. HUBBARD:** Thank you, Judge.

7 **THE COURT:** Anything else?

8 All right. Have a safe night out there on the roads.
9 Stay away from ice. I hope there isn't any. We'll see you
10 tomorrow morning at nine o'clock. Thank you for your courtesy
11 and your patience. The Court is in recess, and Mr. Griffin is
12 remaining.

13 (Proceedings adjourned at 12:29 p.m.)

14 - - -

15

16 **C E R T I F I C A T I O N**

17 I certify that the foregoing is a correct transcription of
18 the record of proceedings in the above-entitled matter.

19

20 s/ Sheri K. Ward
21 Sheri K. Ward
 Official Court Reporter

2/6/2017
Date

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